

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**JANUARY 18, 2001**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, January 18, 2001 at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Chris Carraher, Chair; James Barfield; Frank Garofalo; Bud Hentzen; Bill Johnson; Richard Lopez (late arrival); Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes (late arrival); George Platt; Harold Warner; Ray Warren. Chris Anderson was not present. Staff members present were Marvin Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Barry Carroll, Associate Planner; and Karen Wolf, Recording Secretary.

#### **1. Boundary Alterations to Fire District I**

**DAVE BARBER**, Planning Staff, "Thank you, Mr. Chair. The Sedgwick County Board of Commissioners has received two petitions from property owners requesting that their property be included within the boundaries of Sedgwick County Fire District No. 1. In fact, the County Board has set a public hearing on January 24 to hear comment on these two petitions. Under state statute, the County Board is required to receive testimony from the Planning Commission having jurisdiction over the affected area regarding any incompatibilities that may exist between the proposed expansion of the Fire district, in this case, and the adopted Land Use Plan or Comprehensive Plan for the affected areas.

In both cases that we are going to be looking at today, the Wichita/Sedgwick County Comprehensive Plan is the plan that has jurisdiction over both of these two petitioning areas. The first area is located approximately 1-1/2 mile west of the City of Garden Plain. This is a 10-acre tract which currently falls within the Cheney Fire district, which is indicated with the colored area on the map. The dark square with the arrow is the subject tract. Immediately south of that is a tract of land that falls within the Sedgwick County Fire district No. 1. Garden Plain to the east as you can see, is served by Fire district No. 1. In fact, the fire station for that district is located further to the east with the star, Station No. 35. That station is actually closer to the petitioning property than is the fire station located in the Cheney Fire district.

The Sedgwick County Development Guide contained within the Comprehensive Plan does not designate the petitioning property as falling within the 30-year growth area of the City of Garden Plain. The city does anticipate growing in all three directions--south, west and east, but the petitioning property is just too far to the west to even fall within the 30-year growth area.

The second property is east of Colwich. This is about a 3-acre site, located one mile east of the City of Colwich and it also falls within the Colwich Fire district, as you can see on the map. You can also see that a small tract of land immediately south of the petitioning property has already been taken out of the Colwich Fire district and included in the Sedgwick County Fire district No. 1. The Colwich Fire district is a volunteer service, based out of Colwich, which covers most of Union Township; however you will note that County Fire district No. 1 has located its own fire station one mile east of the Colwich Fire Station, in the heart of Union Township. The petitioning property is located about 1 mile south and east of the county fire station and about 1-1/2 miles east of the Colwich Fire Station. The county has a mutual aid agreement with Colwich whereby they will respond to emergencies if called upon by the Colwich Volunteer Fire Department. This is different from the first-responder agreement that exists between the City of Wichita and the Sedgwick County Fire district.

The Sedgwick County Development Guide also does not indicate this particular petitioning property as falling within the 30-year growth area envisioned for Colwich. Colwich's growth areas are predominately to the northwest and to the south. So we did not anticipate, over the next 30 years, Colwich expanding this far to the east. So based on these assessments, we have made some recommendations to the Planning Commission in terms of findings, that the Planning Commission make a finding to the County Board of Commissioners that adjusting the boundaries of the County Fire district No. 1 to include the petitioning properties would be compatible with future growth directions of both Garden Plain and the City of Colwich, and would also be consistent with the Sedgwick County/Wichita Comprehensive Plan and would constitute orderly, logical and efficient delivery of municipal fire services to the petitioning property, and furthermore that there would not be a increase in the multiplicity of existing fire services in the area as a result of this boundary adjustment. That is all."

**CARRAHER** "Thank you, Mr. Barber. Are there any questions for the speaker?"

**GAROFALO** "Dave, could you point out exactly where the county station is and the Colwich one?"

**BARBER** (Indicating) "The county station is right here. See the arrow? The Colwich Fire Station is in Colwich, over here. They are about a mile apart."

**WARREN** "I am reading that you are recommending that these requests be granted, and that they are incorporated into the Sedgwick County Fire district as opposed to where they are now?"

**BARBER** "Yes."

**CARRAHER** "Are there any further questions of the speaker?"

**MICHAELIS** "What happens tax-wise? Is this a case of somebody who doesn't want to be in Wichita, yet they want Wichita services?"

**BARBER** "Obviously they will be in a different taxing district if they are in a different fire district. There are different taxes associated with each fire district, so by moving into the Sedgwick County fire district, there will be a different tax implication for the petitioning properties. I don't why whether it is more or less. I think this is more an issue of the provision of fire services in a more efficient and timely manner. I think that is the motive behind these petitions."

**MICHAELIS** "As a follow-up on that, what would prevent the neighbor to the north, the neighbor to the east and the neighbor to the west all of a sudden to start saying 'well, if you did it, I can do it'; and then all of a sudden we have everybody coming and saying that they want to go with our services. I am not trying to play the devil's advocate, I am just wondering."

**BARBER** "Well, that has already happened. I am sure that that will continue to happen. You can see that there are already some holes in this Colwich fire district (indicating) here, here and here. Of course, this became part of the city. This is the city's site, so that became part of the city fire district when that was annexed in a year ago. You can see that there are already some holes in this whole area. I think you are right, Jerry, this will proliferate more in the future, as people become dissatisfied with the volunteer-type of service, at least in this case and want more professional type fire service delivery."

**MICHAELIS** "Okay, thank you."

**MARNELL** "Is there someone here from the Sedgwick County Fire Department that is going to speak about this?"

**BARBER** "Not that I am aware of. They will probably speak at the public hearing on the 24<sup>th</sup> though."

**MARNELL** "Well, this just seems like a strange kind of an arrangement that is going to end up with a real patchwork of who are the responders in these kind of areas. It doesn't seem to me like this is a very efficient way of handling this."

**BARBER** "Well, the fact of the matter is that the county did locate a fire station in the middle of Union Township right adjacent to the City of Colwich. So obviously, there was a strategic move there on someone's part to perhaps capture, over the long-term, some customers. That is the reality of the situation and we can't change that."

**MARNELL** "Isn't the Sedgwick County fire district much larger than the Colwich one?"

**BARBER** "Yes, it is."

**MARNELL** "And that would be more central. It looks like it surrounds it."

**BARBER** "It surrounds it on the north and south, to the east. You are right; this is a central location. We don't have any control over that. All we have been asked to do is to comment as to whether or not it is consistent with the Comprehensive Plan. The Comprehensive Plan shows that these sites are both not within the growth areas of these two small communities."

**CARRAHER** "Mr. Krout, did you have something you wanted to add?"

**KROUT** "Just based on a conversation I had with the Emergency Services Director--if you are in the Colwich fire district today, you don't pay a mil levy. It is a volunteer fire department and you don't pay anything for that service. In this case, the property owner who is asking to come in to the Sedgwick County fire district recognizes that they are going to have to pay additional taxes--I think it is about 16 mils additional taxes--so it is not insignificant, in order to have the Sedgwick County service. It may affect, although they didn't have any data, but it may improve their insurance premiums if they are in the Sedgwick County district versus being in the Colwich fire district."

The Colwich fire district is really a very informal relationship and it is for the City of Colwich, but then the township has an informal relationship with the city. As I understand it, the county does have a mutual aid agreement with the City of Colwich and with Colwich Township as far as this area goes, but that is different than the first responder between the City of Wichita and Sedgwick County where it is the same 911 call and the dispatcher decides who to call out, whether it is a city or county fire station. In this case, the Sedgwick County Fire Department up there waits for a call from Colwich, unless they see a fire burning next door, they wait for a call from Colwich saying please help us. So I think a lot of people are concerned about the response times and they want to be sure to have the professional service, and in this case, this property is even closer to the county station than it is to the city station. I think that when this station was built some years ago, it was built with the county strategy that eventually they would negotiate with Colwich and the township and be the sole provider in this area.

So, to a certain extent, there already is a duplication. It is an unusual situation, but I think that probably this is going in the right direction of providing a professional fire service for this whole area."

**HENTZEN** "Mr. Chair, I have a little background on this because my time on the County Commission and the governing board of the county fire district, we had to talk about this from time to time. I think Marvin has indicated very correctly that if somebody comes in to the fire district, they then are charged the fire district mil levy. I think it is between 15 and 16 mills right now. I can tell you that I was at the meetings when that was organized long before I went into the County Commission. They told us, because I lived out in that district, that it was just going to be a couple of mills. Well, anyway, we voted for it and the county fire district was organized. But they have become, in my judgement, real professionals, along with this City of Wichita's fire people, and what the people at Colwich, I felt, wanted, was coverage by the county fire district, but they didn't want to pay the 15 or 16 mills. We always had to face that, so we just didn't do anything until somebody applied to get into fire district No. 1. I don't know of any that we ever turned down.

So all I am saying to you is, with the location of the county fire stations and the whole situation out there, I would recommend approval for both of these. Not only the county fire district No. 1 can respond very quickly to Colwich, but they have the territory outside the city of Colwich that are now in the Sedgwick County fire district. So all I am saying is that I hope we approve it."

**CARRAHER** "Are there any other questions of the speaker? Thank you, Mr. Barber. Is there anyone in the gallery who is here to speak on this? Seeing none, I will bring it back to the Commission. I will open the floor for whatever the Commission deems appropriate. Is there any commentary? Any motions?"

**MOTION:** That the Metropolitan Area Planning Commission submit to the Sedgwick County Board of County Commissioners that they find that adjusting the boundaries of County Fire District No. 1 to include the petitioning property is compatible with the future growth directions of Colwich; is consistent with the Wichita-Sedgwick County Comprehensive Plan; and would constitute a logical, orderly, efficient and more timely delivery of municipal fire services to the petitioning property.

**MCKAY** moved, **HENTZEN** seconded the motion.

**CARRAHER** "Is there any questions or commentary over the motion on the floor. Seeing none, we will move into a voice vote.

**VOTE ON THE MOTION:** The motion carried unanimously with 12 votes in favor.

-----

## **2. Consideration of Subdivision Committee recommendations**

**CARRAHER** "I understand that Item 2/2 has been deferred for two weeks. Is that correct, Mr. Strahl?"

**NEIL STRAHL**, Planning staff "Yes."

**CARRAHER** "Is there anyone in the gallery who came here to speak on this item? Is there anyone here to speak on items 2/1, 2/3 or 2/4? Seeing none, I would like to open the floor for a motion to approve Items 2/1, 2/3 and 2/4 as distributed to the Planning Commission."

Subdivision Committee items 2/1, 2/3 and 2/4 were approved subject to the Subdivision Committee recommendations.

**GAROFALO** moved, **PLATT** seconded the motion, and it carried unanimously (12-0).

**2/1. SUB2000-120** - One-Step Final Plat of PREMIER ADDITION, located north of Kellogg on the west side of Greenwich Road.

- A. Municipal water is available to serve this site. City Engineering has required a guarantee for the extension of sanitary sewer. An off-site sewer easement is also required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat denotes a joint access opening between the two lots. Traffic Engineering has required the joint access opening to be in alignment with the opening across Greenwich Road. Distances should be shown for all segments of access control.
- E. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.

- F. The joint access opening shall be established by separate instrument. Future maintenance of the driveway within the easement should be addressed by the text of the instrument.
- G. The signature line for the County Clerk needs to be revised to reference "Don Brace".
- H. The signature line for the MAPC Chairman needs to be revised to reference "Christopher S. Carraher".
- I. The year "2000" should be replaced with "2001".
- J. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----

**2/2. SUB2000-121** - One-Step Final Plat of TOBEN 5<sup>TH</sup> ADDITION, located on the north side of 39<sup>th</sup> Street North, west of Webb Road.

Deferred

-----

**2/3. DED2000-36** - Dedication of a Utility Easement for property located on the southwest corner of 21<sup>st</sup> Street North and Webb Road.

LEGAL DESCRIPTION: Part of Lot 1, Block 1, Legacy Park Wilson Estates Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-94 and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

-----

**2/4. DED2000-37** - Dedication of a utility easement for property located on the southwest corner of 21<sup>st</sup> Street North and Webb Road.

LEGAL DESCRIPTION: Part of Lot 2, Block 1, Legacy Park Wilson Estates Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-94 and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

-----  
**CHRIS CARRAHER**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

-----  
Lopez arrived at 1:45 p.m.

**ZONING:**

3. **ZON2000-00054** - Zone change from "SF-6" Single-Family Residential to "MH" Manufactured Housing, located south of 47<sup>th</sup> Street South on the east side of Seneca.

**CARRAHER** "This item has been deferred until the Thursday, March 22<sup>nd</sup> meeting."  
-----

4. **ZON2000-00062** - Harry B. Brown, Jr. (Owner), Beltway Partners LLC & Hope Chandler c/o Ritchie Associates (Applicants) PEC, c/o Rob Hartman (Agent) request a zone change from "SF-20" Single-Family Residential to "L" Limited Industrial, on property described as:

A tract of land in the Southwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th Principal Meridian more particularly described as follows:

Commencing at the Northwest Corner of the Southwest Quarter of Section 3, T27S, R2E of the 6th P.M.; thence bearing N 89 degrees 07'30"E along the North line of said Southwest Quarter, a distance of 50.00 feet to the point of beginning; thence bearing N 89 degrees 07'30"E along the North line of said Southwest Quarter, a distance of 2597.70 feet to the Northeast Corner of said Southwest Quarter; thence bearing S 0 degrees 35'35"E along the East line of said Southwest Quarter a distance of 1815.28 feet to the intersection of the North Right of Way of K-96 Highway; thence along the North Right of Way of the K-96 Highway the following courses and distances: N 24 degrees 08'08"W, a distance of 532.89 feet to the point of curvature of a curve to the left with a radius of 2039.86 feet and a chord distance of 1696.46 feet bearing N 48 degrees 12'42"W; thence along said curve to the left through a central angle of 49 degrees 08'34", an arc distance of 1749.60 feet; thence bearing N 73 degrees 44'11"W, a distance of 322.28 feet; thence bearing N 85 degrees 58'54"W, a distance of 301.62; thence bearing S 89 degrees 49'11"W, a distance of 522.46 feet; thence bearing N 0 degrees 43'07"W, parallel with the West line of said Southwest Quarter, a distance of 49.03 feet to the Point of Beginning, together with

A tract in the Northwest Quarter of Section 3, Township 27, South Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter; thence north, on the west line of said Northwest Quarter, on an assumed bearing of North 0 degrees 00' 00" East, a distance of 157 feet; thence North 89 degrees 38' 42" East, parallel with the south line of said Northwest Quarter, a distance of 223 feet to the POINT OF BEGINNING; thence North 0 degrees 00' 00" East, a distance of 138 feet; thence South 89 degrees 38' 42" West, a distance of 223 feet to a point on the west line of said Northwest Quarter; thence North 0 degrees 00' 00" East, on said west line, a distance of 42.00 feet; thence North 89 degrees 38' 42" East, a distance of 240.74 feet; thence South 0 degrees 00' 00" West, a distance of 180.00 feet; thence South 89 degrees 38' 42" West, a distance of 17.74 feet to the POINT OF BEGINNING, together with

A tract in the NW 1/4 of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows, Beginning at a point 150 feet North of the Southwest corner of said NW 1/4; thence East 223 feet; thence North parallel with the West line of said Quarter Section 145 feet; thence West 223 feet; thence South 145 feet to the place of beginning, EXCEPT the South 7 feet thereof.

**BARRY CARROLL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicants are requesting a zone change from "SF-20" Single-Family Residential to "LI" Limited Industrial on a 26.4-acre unplatted tract located north of K-96 and east of Greenwich Road. The area has a triangular shape with the southern boundary curving along K-96. The application area is currently outside the corporate City limits and in Sedgwick County. The land is undeveloped. There is a KGE power line that runs along the northern property line. There are two residential homes on five-acre tracts of land, north of K-96 that abut Greenwich Road to the west. The northern tract is also included in this application area.

It is intention of the applicants to combine the application area with a 159-acre tract of land, owned by Ritchie Associates, directly to the north and create an industrial park. On August 9, 2000, the Board of County Commissioners approved "LI" Limited Industrial zoning (ZON2000-00023) with a Protective Overlay #74 for a 159-acre tract, north of the application area, subject to platting within one year. The tract will be platted as part of the "Beltway Business Park." The platting has not been completed to date. Although there are no specific uses for the application area and proposed industrial park, a "concept plan" has been developed (see attachment).

South of K-96 is the Kensington Garden Addition that is zoned "SF-6" Single-Family Residential. West of the site is the Greenwich Business Park Addition, and a new soccer complex, on property zoned "LI" Limited Industrial. To the southwest is the Regency Park Addition that is also zoned "LI." To the east is the proposed "Fairmount Addition" consisting of 86.5 acres that is currently zoned "SF-20." At the applicant's request [Ritchie Associates] the platting process was deferred on December 14, 2000. Once platted, the area will be annexed, rezoned to "SF-6" and will contain 242 single-family residential lots. To the southeast is the Messiah Baptist Church 4<sup>th</sup> Addition [and two churches -Messiah Baptist & Magdalene Catholic] that is zoned "SF-6" Single-Family Residential.

Since the subject property is adjacent to the Wichita City limits, it should be annexed and developed under the City landscape requirements. Also, the subject property should be platted in a manner that provides for internal circulation in conjunction with the 159-acre tract located immediately to the north. As noted, the application area is to be combined with the tract of land to the north that is zoned "LI" and subject to a Protective Overlay. Consequently, the conditions of approval for this application area should be consistent with the terms for the property to the north.

Based upon a previous agreement between KDOT and Sedgwick County's Public Works Department, there will be complete access control along the western perimeter of the application area. Staff will be requesting that the two tracts be planned in one unit, with a loop street concept, to avoid the long cul-de-sac depicted in the "concept plan." It is anticipated that, as part of the platting process, staff will be reviewing the guarantees for this tract and the 159-acres to the north for widening Greenwich Road. Additional signalization on Greenwich Road may also be needed, depending on the proposed access pattern. Apparently no guarantees for street improvements were taken with the plat of Regency Park Addition in 1997, an oversight at the time.

**CASE HISTORY:** The site is undeveloped and unplatted. The tract will be platted as part of the "Beltway Business Park." On August 9, 2000, the Board of County Commissioners approved (subject to pending platting) "LI" Limited Industrial zoning with a Protective Overlay #74 for a 159-acre tract located immediately north of the subject property.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LI" Limited Industrial	Undeveloped
SOUTH:	"SF-6" Single-Family Residential	Kensington Gardens Cemetery
EAST:	"SF-20" & "SF-6"	Undeveloped Churches-southeast
WEST:	"LI" Limited Industrial	Soccer Fields & Residential

**PUBLIC SERVICES:** The site will have no access from Greenwich Road, which is a paved two-lane arterial, due to a previous agreement with KDOT. In 1997, Greenwich Road, north of K-96, had traffic volumes of 1,088 vehicles per day. K-96, near Greenwich Road, had traffic volumes of 10,028 vehicles per day. The 2030 Transportation Plan estimates

traffic volumes along Greenwich Road, north of K-96, will increase to 16,200 vehicles per day. In 2030, K-96, at Greenwich Road, will increase to 44,718 vehicles per day. The site currently does not have public water or sewer service. The applicant will need to guarantee the extension of public water and sewer to site as a part of the platting process if the zone change is approved.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development; however, the update also indicates that a new area immediately north of this site is appropriate for major industrial development in the future. The Industrial Locational Guidelines of the Comprehensive Plan indicate that the factors to be considered when locating industrial uses are: the characteristics of the individual use, the surrounding uses, the zoning district, and the degree to which the specific use would clash with adjacent uses. The uses surrounding this site already exhibit a mixture of commercial/industrial uses with residential uses, indicating a general acceptance of mixed-use development in the area. The proposed zoning district ("LI" Limited Industrial) supports industrial uses that can meet high development and performance standards.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the request be APPROVED, subject to platting within a period of one year and subject to the additional provisions of a Protective Overlay #86 (P-O) district as outlined below:

1. Uses: All uses permitted in the "LI" zoning district except that an asphalt or concrete plant, limited, will not be permitted. Should there be a need for more than 100,000 square feet of floor area of non-"IP" uses, a traffic study will then be completed. The maximum square footage of non-"IP" uses may be increased to 300,000 square feet by an adjustment. The City Traffic Engineer may require that additional traffic improvements be guaranteed to support this traffic volume. The total average daily traffic generated by the uses within this property shall not exceed 8,000 ADT.
2. The transfer of the title on all or any portion of the land included in the development does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owners, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions in this overlay, consistent with the approved development plan, without filing a formal amendment.
3. Minimum setback requirements for all front setbacks will be 25 feet, rear-25 feet, interior side-15 feet, and street side yard-35 feet.
4. Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownership's within and abutting the property.
5. Height: 55 feet maximum height for all structures.
6. Signs: All signs along Greenwich, 29<sup>th</sup> Street North, and K-96 shall be limited to the standards for the "IP" district in the City of Wichita's sign code. No signs with rotating or flashing lights shall be permitted, nor shall any portable signs or off-site signs be permitted.
7. Access: Based upon a previous agreement with KDOT and Sedgwick County's Public Works Department, there will be complete access control along the western perimeter of the application area. Access will need to be provided to the application area from the 159-acre tract to the north.
8. No building permits shall be issued for any development without municipal water and sewer service.
9. Cross-lot circulation is to be provided for all lots developed for retail, commercial or office uses, through the approval of site plans by the Director of Planning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding properties to the north and east are largely undeveloped and used for agricultural and residential uses. North of the application area is a 159-acre undeveloped tract of land owned by Ritchie Associates that was recently zoned "LI" Limited Industrial. South of K-96 is the Kensington Garden Addition that is zoned "SF-6" Single-Family Residential. West of the site is the Greenwich Business Park Addition, and a new soccer complex, on property zoned "LI" Limited Industrial. To the east is the proposed "Fairmount Addition" consisting of 86.5 acres that is currently zoned "SF-20." At the applicant's request [Ritchie Associates] the platting process was deferred on December 14, 2000. Once platted, the area will be annexed, rezoned to "SF-6" and will contain 242 single-family residential lots. To the southwest is the Regency Park Addition that is also zoned "LI." To the southeast is residential zoning ("SF-20") and to the southeast is the Messiah Baptist Church 4<sup>th</sup> Addition [and two churches -Messiah Baptist & Magdalene Catholic] that is zoned "SF-6" Single-Family Residential.
2. The suitability of the subject property for the uses to which it has been restricted. The location of the site north along the K-96 Expressway, south and east from "LI" zoning, makes at least a portion of this area less desirable for residential development.

3. Extent to which removal of the restrictions will detrimentally affect nearby property. The proposed rezoning would permit commercial and industrial uses that would generate increased traffic, noise and lighting, as compared to uses that would otherwise develop under the existing residential zoning. However, the "LI" zoning to the north and west already impacts this area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the City and County's typical zoning pattern of locating nonresidential uses at arterial intersections or freeway interchanges. The industrial locational guidelines of the Comprehensive Plan indicate that such uses should be located in close proximity to support services and provided good access to major arterials, belt highways, utility lines, along railroad spurs, near airports, and as extensions of existing industrial areas. The 1993 Land Use Guide did not anticipate industrial uses in this location since there was an estimated 80 years of industrially zoned land in 1993. However, not all of that land is available or marketable. MAPC recommended updating the plan designates this area as appropriate for new growth within the next 10 years.
5. Impact of the proposed development on community facilities: Neither municipal water or sewer services are currently available to serve this site. However, the City plans for future extensions of water service to this area and staff from both the City and County indicate that this area could be served with sewer service by one of the two sewer utilities. Depending on the nature of the development that occurs on this property, significant improvements may be necessitated. Without a traffic study to assess these impacts, it is appropriate to limit the traffic generated by development on the property.

**CARROLL** "There is a 159-acre tract to the north of this site and a soccer complex to the northwest. The area in question is 26.4 acres, currently zoned 'SF-20'. The request is for 'LI' Limited Industrial. It is currently in the county and undeveloped. This tract was approved in August of 2000 by the Board of County Commissioners, and that particular zoning had a Protective Overlay. What we have done is add the same conditions of a Protective Overlay to this particular request, so that they are consistent. South of this area is the Kensington Garden Addition; west is the Greenwich Business Park Addition and soccer complex. To the east is the proposed Fairmount residential addition, and to the southeast is the Messiah Baptist Church Fourth Addition and the Magdalene Catholic Church.

This will be combined with the tract of land to the north. It is undeveloped and unplatted at this point. There will be no access along Greenwich Road, they will have to come to the north, due to the existing ramps that are in K-96. The Comprehensive Plan states that this is a new area appropriate for major industrial development in the future. To summarize, we are recommending approval, subject to the Protective Overlay that is consistent with the same Protective Overlay to the north. We have added nine conditions. I visited with the agent, who is here with us--he is comfortable with all nine of the conditions. I will answer any questions that you might have."

**HENTZEN** "Barry, would you point to the areas--what is north, south, east and west? I know you read them, but where are they on the map?"

**CARROLL** "No problem. This is the cemetery--the Kensington Gardens Addition (indicating). There is also single-family there."

**HENTZEN** "Is that south?"

**CARROLL** "That is south of K-96. All right. Then to west here (indicating) is the Greenwich Business Park Addition and new soccer field. To the east (indicating) right there, is the proposed Fairmount Addition that is in the process of being platted. It is 86.5 acres. And to the southeast is the Messiah Baptist Church Fourth Addition. That is it."

**HENTZEN** "Where is the Catholic Church?"

**CARROLL** "It is a little bit east; (indicating) right over in this area."

**PLATT** "I would just make a comment, after listening to Barry. When the plat came up, I raised the issue of that Fairmont Addition. I think we have a tremendous problem of potential confusion, and I see it is misspelled in the staff notes, and Barry pronounced it Fairmount. I think there is a problem."

**CARROLL** "It is on hold at this point, deferred on December 14, proposing 242 single-family residential lots right in here (indicating) as I understand it."

**CARRAHER** "Are there further questions of staff? Thank you, Mr. Carroll. We will now hear from the applicant."

**ROB HARTMAN** "I am here on behalf of the applicant. As Barry mentioned, this will be combined with the 159-acre tract to the north to develop an industrial park on the entire area here. As you can see, the entire south boundary here borders K-96, and we are aware that all of the access is going to come from the north off of Greenwich Road, north of the existing ramp that is in place. We are in agreement with the staff comments."

**CARRAHER** "Are there any questions of the applicant?"

**GAROFALO** "When you say Industrial Park, what are you talking about?"



**HARTMAN** "Something similar to what is out there west of Webb Road and north of 29<sup>th</sup> Street--the Comatara Industrial Park. You have warehouse type uses. I think just across the street, Culligan Water is getting ready to put in some type of facility. So it would be similar in character to those kind of uses."

**WARREN** "I noted that you won't have any access on this, and I assume you are getting your access off of your 159 acres to the north, but the concept plan here shows a road coming right straight out. So that is just something subject to change?"

**HARTMAN** "Yes, it is. That was an earlier concept before any of this other happened."

**WARREN** "Okay."

**CARRAHER** "Are there any other questions of the applicant? Okay, thank you, Mr. Hartman. Is there anyone in the gallery who wishes to speak either in favor or against this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding properties to the north and east are largely undeveloped and used for agricultural and residential uses. North of the application area is a 159-acre undeveloped tract of land owned by Ritchie Associates that was recently zoned "LI" Limited Industrial. South of K-96 is the Kensington Garden Addition that is zoned "SF-6" Single-Family Residential. West of the site is the Greenwich Business Park Addition, and a new soccer complex, on property zoned "LI" Limited Industrial. To the east is the proposed "Fairmount Addition" consisting of 86.5 acres that is currently zoned "SF-20." At the applicant's request [Ritchie Associates] the platting process was deferred on December 14, 2000. Once platted, the area will be annexed, rezoned to "SF-6" and will contain 242 single-family residential lots. To the southwest is the Regency Park Addition that is also zoned "LI." To the southeast is residential zoning ("SF-20") and to the southeast is the Messiah Baptist Church 4<sup>th</sup> Addition [and two churches -Messiah Baptist & Magdalene Catholic] that is zoned "SF-6" Single-Family Residential. The suitability of the subject property for the uses to which it has been restricted. The location of the site north along the K-96 Expressway, south and east from "LI" zoning, makes at least a portion of this area less desirable for residential development. Extent to which removal of the restrictions will detrimentally affect nearby property. The proposed rezoning would permit commercial and industrial uses that would generate increased traffic, noise and lighting, as compared to uses that would otherwise develop under the existing residential zoning. However, the "LI" zoning to the north and west already impacts this area. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the City and County's typical zoning pattern of locating nonresidential uses at arterial intersections or freeway interchanges. The industrial locational guidelines of the Comprehensive Plan indicate that such uses should be located in close proximity to support services and provided good access to major arterials, belt highways, utility lines, along railroad spurs, near airports, and as extensions of existing industrial areas. The 1993 Land Use Guide did not anticipate industrial uses in this location since there was an estimated 80 years of industrially zoned land in 1993. However, not all of that land is available or marketable. MAPC recommended updating the plan designates this area as appropriate for new growth within the next 10 years. Impact of the proposed development on community facilities: Neither municipal water or sewer services are currently available to serve this site. However, the City plans for future extensions of water service to this area and staff from both the City and County indicate that this area could be served with sewer service by one of the two sewer utilities. Depending on the nature of the development that occurs on this property, significant improvements may be necessitated. Without a traffic study to assess these impacts, it is appropriate to limit the traffic generated by development on the property.) I move that we recommend to the governing body that the request be approved, MAPC recommended the application be APPROVED, subject to platting within a period of one year and subject to the additional provisions of (P-O) Protective Overlay #86 district as outlined below:

1. Uses: All uses permitted in the "LI" zoning district except that an asphalt or concrete plant, limited, will not be permitted. Should there be a need for more than 100,000 square feet of floor area of non-"IP" uses, a traffic study will then be completed. The maximum square footage of non-"IP" uses may be increased to 300,000 square feet by an adjustment. The City Traffic Engineer may require that additional traffic improvements be guaranteed to

support this traffic volume. The total average daily traffic generated by the uses within this property shall not exceed 8,000 ADT.

2. The transfer of the title on all or any portion of the land included in the development does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owners, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions in this overlay, consistent with the approved development plan, without filing a formal amendment.
3. Minimum setback requirements for all front setbacks will be 25 feet, rear-25 feet, interior side-15 feet, and street side yard-35 feet.
4. Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownership's within and abutting the property.
5. Height: 55 feet maximum height for all structures.
6. Signs: All signs along Greenwich, 29<sup>th</sup> Street North, and K-96 shall be limited to the standards for the "IP" district in the City of Wichita's sign code. No signs with rotating or flashing lights shall be permitted, nor shall any portable signs or off-site signs be permitted.
7. Access: Based upon a previous agreement with KDOT and Sedgwick County's Public Works Department, there will be complete access control along the western perimeter of the application area. Access will need to be provided to the application area from the 159-acre tract to the north.
8. No building permits shall be issued for any development without municipal water and sewer service.
9. Cross-lot circulation is to be provided for all lots developed for retail, commercial or office uses, through the approval of site plans by the Director of Planning.

**WARREN** moved, **JOHNSON** seconded the motion.

**CARRAHER** "Are there any questions or commentary regarding the motion on the floor? Seeing none, we will move into a voice vote."

**VOTE ON THE MOTION:** The motion carried unanimously (12-0).

- 
5. **ZON2000-00061** - S & P Development c/o Ron Peake (Owner/Applicant); PEC, PA c/o Gary Wiley (Agent) request zone change from "SF-6" Single-Family Residential to "NO" Neighborhood Office on property described as:

A tract of land in the West Half of the Northwest Quarter of Section 9, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southeast Corner of Lot 3, Block 1, Hanley Second Addition; Thence South 88 degrees 53'29" West, along the South Line of said Lot 3, 461.50 feet; Thence South 00 degrees 54'08" East, 132.92 feet; Thence North 88 degrees 05'52", 461.17 feet to the East line of the West Half of said Northwest Quarter; Thence North along said East line 134.58 feet to the point of beginning. Located north of 19<sup>th</sup> Street North and east of Webb.

**SCOTT KNEBEL**, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant requests a zone change from "SF-6" Single-Family Residential to "NO" Neighborhood Office on a 1.42 acre unplatted tract located north of 19<sup>th</sup> Street North and east of Webb. The applicant indicates that the "NO" Neighborhood Office zoning is requested to provide a location for an office for Sproul Construction and/or other neighborhood office uses. The applicant is proposing to plat the subject property as Lots 17 and 18, Block 1 of the Remington Place Addition. The Remington Place Addition (SUB2001-00004) is scheduled to be heard by the Subdivision Committee on January 25, 2001 and the MAPC on February 8, 2001.

The surrounding area is characterized by a mixture of uses with apartments to the north, a developing office/commercial center to the northwest, vacant duplex lots to the west, a church to the south, and undeveloped property proposed for single-family residential development in the Remington Place Addition to the east. The property north of the site is zoned "B" Multi-Family Residential. The properties northwest of the site were recently approved for "GO" General Office and "LC" Limited Commercial zoning in the Hanley CUP. The property west of the site is zoned "TF-3" Two-Family Residential. The property south of the site is zoned "SF-6" Single-Family Residential. The property east of the site is zoned "SF-20" Single Family Residential.

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "B" Apartments  
SOUTH: "SF-6" Church  
EAST: "SF-20" Undeveloped  
WEST: "TF-3" Undeveloped

**PUBLIC SERVICES:** The site has access to 19<sup>th</sup> Street North, an unpaved local street. The applicant is proposing to pave 19<sup>th</sup> Street North across the frontage of the subject property as a condition of the Remington Place Addition plat. Public water and sewer service are available to be extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Medium-Density Residential" development. Low-Density office uses such as those proposed by the applicant tend to have similar impacts on nearby properties as medium-density residential uses. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses, such as the proposed single-family uses east of the site, and higher intensity uses, such as the apartments north of the site and the office/commercial center northwest of the site.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of uses with apartments to the north, a developing office/commercial center to the northwest, vacant duplex lots to the west, a church to the south, and undeveloped property proposed for single-family residential development in the Remington Place Addition to the east. The property north of the site is zoned "B" Multi-Family Residential. The properties northwest of the site were recently approved for "GO" General Office and "LC" Limited Commercial zoning in the Hanley CUP. The property west of the site is zoned "TF-3" Two-Family Residential. The property south of the site is zoned "SF-6" Single-Family Residential. The property east of the site is zoned "SF-20" Single Family Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. Given the limited size of the subject property and its location between apartments and a church, it is unlikely that the subject property would develop with single-family residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code, which should sufficiently limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Medium-Density Residential" development. Low-Density office uses such as those proposed by the applicant tend to have similar impacts on nearby properties as medium-density residential uses. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses, such as the proposed single-family uses east of the site, and higher intensity uses, such as the apartments north of the site and the office/commercial center northwest of the site.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.

**KNEBEL** "The applicant in this case has indicated that the Neighborhood Office zoning is requested to provide a location for an office for Sproul Construction and other Neighborhood Office uses. The surrounding area is characterized by a mixture of uses, as you can see. There quite a few different types of zoning in the area. There are apartment buildings that were recently constructed, located to the north. Most everything that has happened out here has happened since 1997, when this aerial was taken. There is developing commercial and office center in this location (indicating), which had some 'B' zoning which was recently changed to 'GO' by this Commission.

There are some vacant duplex lots in this location, and church property. The applicant that is proposing to plat this property along with this property in his location (indicating), which will be developed with single-family homes in the future. The Land Use Guide indicates that this area is appropriate for medium density residential. In reviewing the impacts of medium density residential and comparing that to low density office use. It is the opinion of the Planning staff that the impact on neighboring properties of those two types of uses are very similar, nearly identical. In addition to that, the office locational guidelines indicate that the office zoning can be used as a buffer from high intensity uses, such as the very high density apartments from lower intensity uses, such as single-family, in these areas here. Staff has recommended that this request be approved, subject to platting. We are basing our recommendations on the findings on Page 3 of the staff report, and I will stand for questions."

**HENTZEN** "Is this in the City of Wichita?"

**KNEBEL** "Yes, this particular property is. The City limits boundary is this red line right here (indicating).

**HENTZEN** "Okay. Next question. Is it in one of the DAB districts?"

**KNEBEL** "It is in one of the DAB districts. Staff selected not to have the DAB hear it because we didn't believe there was a significant impact on neighboring properties."

**HENTZEN** "Okay, thank you."

**CARRAHER** "Are there any further questions of staff? Thank you, Mr. Knebel. We will now hear from the applicant."

**GARY WILEY** "I am here on behalf of the S&P Development. S&P is David Sproul and Ron Peake, and as Scott mentioned, they are going to be developing approximately 72 acres immediately to the east of this and 138 single-family lots. David wants to build his office at this site and that is why we are here today. We are, of course, in agreement with the staff comments, and would be happy to answer any questions you might have."

**CARRAHER** "Are there any questions of the applicant?"

**WILEY** "I might just mention that the 80 acres immediately to the east has also requested annexation."

**CARRAHER** "Any other questions? Thank you, Mr. Wiley. Is there anyone in the audience wanting to speak in favor or in opposition to this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of uses with apartments to the north, a developing office/commercial center to the northwest, vacant duplex lots to the west, a church to the south, and undeveloped property proposed for single-family residential development in the Remington Place Addition to the east. The property north of the site is zoned "B" Multi-Family Residential. The properties northwest of the site were recently approved for "GO" General Office and "LC" Limited Commercial zoning in the Hanley CUP. The property west of the site is zoned "TF-3" Two-Family Residential. The property south of the site is zoned "SF-6" Single-Family Residential. The property east of the site is zoned "SF-20" Single Family Residential. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. Given the limited size of the subject property and its location between apartments and a church, it is unlikely that the subject property would develop with single-family residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code, which should sufficiently limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Medium-Density Residential" development. Low-Density office uses such as those proposed by the applicant tend to have similar impacts on nearby properties as medium-density residential uses. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses, such as the proposed single-family uses east of the site, and higher intensity uses, such as the apartments north of the site and the office/commercial center northwest of the site. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to staff comments and platting within 1 year.

**JOHNSON** moved, **LOPEZ** seconded the motion.

**CARRAHER** "Are there any questions or commentary in regards to the motion on the floor? Seeing none, we will move into a voice vote.

**VOTE ON THE MOTION:** The motion carried unanimously (12-0).

-----  
**CARRAHER** "Mr. Krout, did you want to let Ms. Goltry speak here?"

**KROUT** "Yes, I think this would be a good opportunity for that."

**CARRAHER** "Is there any objection that we move to this item?"

Item taken out of order:

**Other Matters**

**Setting public hearing to discuss changes to the Unified Zoning Code**

**DONNA GOLTRY**, Planning staff "What I want to talk to you about is that the MAPC Advance Plans Committee had ongoing meetings most Tuesday mornings at 7:30 since the end of October. We have gone through all of the first draft of the changes that were proposed to be made to the Zoning Code.

We finished that up last Tuesday morning and now I must get a re-write of all of the changes because as we moved through the process, the Committee made a number of changed recommendations to what we proposed as the draft, as well as we had some additional input from staff that came up with other problems that they had seen over time. So I will be getting a second draft by next week to the MAPC Advance Plans Committee for them to look at again. Then we talked about scheduling the public hearing for February 22. So I am sure with all of the other cases we already have being filed for February 8 and February 22, we will have a lengthy meeting."

**MCKAY** "Marvin, could we cut off taking applications? This is going to take a couple of hours at least, minimum."

**GOLTRY** "We already have three cases filed, I believe, for the 22<sup>nd</sup>. Is that also the date we are having the public hearing on the Historic Preservation Plan?"

**KROUT** "That comes up later in your agenda, but we can discuss it now. We are asking you to call a hearing on the Preservation Plan also for discussion. I guess this may draw a lot of interest. It depends on whom we notify on it. Another option might be just to pick a separate date for it.

Dale, is the closing date for the February 22<sup>nd</sup> meeting next Monday?"

**MILLER** "Yes, it is."

**KROUT** "You know, if you want to leave the date open, we can take a look at how many cases we have. If we have a light agenda like this one, then maybe we could do it. If not, then I will get in touch with the Chair and we can discuss what the options are."

**MCKAY** "I just want to make sure that we get the 30 days so we don't have to do like we did with the Delano thing."

**KROUT** "Right."

**WARREN** "I think if there are going to be some major changes, and I have no idea what you have done up to now, I would rather--and nobody likes extra meetings, but I would rather call a special meeting if we are talking about 2 or 3 hours of major changes and discussion. Rather than to try to cramp that into a meeting. That is important enough, I think, to have another meeting for."

**CARRAHER** "Okay. Are there any questions of Ms. Goltry on what she has explained to us? Okay. What is the pleasure of the Commission?"

**MARNELL** "There are two areas are going to draw folks. I don't know how much the rest of it will because it is pretty mundane stuff."

**MCKAY** "But they have completely rewritten--not us, but the legal staff of the City and County have completely re-written the part of bars, the sex code stuff and all of that. So whether that will bring people out of the woodwork or not, I don't know."

**MARNELL** "And then the other ones, the portable storage boxes. The box containers. I would say that was hard to estimate. The only people that showed up for the meetings were just staff and ourselves as we were working through these, but I would doubt that that would happen when it comes to a public meeting.

I think those we mentioned were the only two that would bring people. The rest of them just seem like all of the changes we are making are really minor and they aren't something I can see people opposed to--making development easier in concentrated area, some of those things, and then just cleaning up, you know perfunctory language changes, but those two, it is hard to predict.

But if the lawyers show up for the club owners, it could turn out to be a long hearing. And I don't know how many box companies there are."

**MCKAY** "Donna, you already had some meetings with the box companies. How many were there, 5 or 6 of them?"

**GOLTRY** "There were representatives from 3 or 4 box companies that attended the three meetings. I am sure they will be here though with the public hearing."

**MCKAY** "Because what we did, they aren't going to like at all."

**GOLTRY** "That is right. They are going to have some feedback on what you are proposing."

**BARFIELD** "What did you do?"

**MCKAY** "Added certain rules and regulations they have to abide by, primarily coloring and height."

**WARNER** "And signage."

**MCKAY** "That was one of the things, yes. The signage on the side of them."

**JOHNSON** "It can't be just a big billboard."

**MCKAY** "Yeah, and they should be conducive to the buildings that are there."

**WARNER** "And the length of time."

**MCKAY** "We talked about the length of time, also."

**GARFALO** "We are going to take the changes up as a whole group first before we set the public hearing."

**MCKAY** "That is kind of what we are discussing here."

**GAROFALO** "But we are going to discuss it before the public hearing, right?"

**KROUT** "You can do that. I have seen the Planning Commission handle it both ways. I assume that for the most part, the subcommittee has done the background work and that there won't be a lot of details that we need to go over as the Planning Commission as a whole. We can just go ahead to the public hearing and find out what sort of clean-up we need to do and then send that back to the subcommittee to work on the clean-up; or to have a discussion about everything. We can have a discussion about everything before the hearing."

**MCKAY** "You are going to be able to get a copy out to everyone before the public hearing, aren't you?"

**GOLTRY** "Yes, we will."

**MICHAELIS** "I would feel better if we discussed it internally before we had the public hearing."

**GAROFALO** "That is what I think."

**MCKAY** "We were just trying to get a time schedule."

**GAROFALO** "Marvin suggested letting them look at what the agendas are going to look like in February, right?"

**MCKAY** "That is for the public hearing."

**KROUT** "Yeah. But you would like to have a workshop discussion with the whole Planning Commission to kind of walk through some items that our subcommittee has already discussed. That is fine."

**MARNELL** "I think that would be a good idea."

**MCKAY** "But whether we have it before or after the public hearing. That is the only thing. It makes no difference to me."

**BARFIELD** "Before."

**MICHAELIS** "I think before."

**WARREN** "Well, I think somebody in that meeting ought to represent their interests whether we have a public hearing or just invite one of their speakers in."

**MICHAELIS** "Then it will turn into a public meeting."

**MCKAY** "If we are going to do it with just us, let's just review it and let Donna and you ask questions of the committee of why we did this, or why we did that, or something to that effect. And then have the public hearing. And then if we have to have another hearing before the final, or whatever, I don't care. This is pretty important, I think, the revamping of the Zoning Code."

**HENTZEN** "I would like to see that we listen to the public before we do too much discussion on it. Otherwise, we give them the impression that we have already made up our minds. So I would suggest that staff get something to all of us, even the draft plan, so that we all know what we are talking about. Have the public hearing, and then after the public hearing, whether it is that day or the next time we vote on it. I just don't like to have it baked done before a public hearing."

**MARNELL** "I don't know, but I think on those two issues there is quite a bit of detail to understand. And if you don't understand the issues we are putting in to it, it seems like it would be good to have everybody up to speed on where it was and where it moved. To have a workshop ahead of time and then a public hearing might be more meaningful."

**MICHAELIS** "I was going to follow up. I kind of agree with Mr. Marnell. I think I would feel better about going into it if I knew what the committee had come up with and discussed it. Now, in the same breath, I am not one to advocate a lot of meetings either. But it might not hurt to have one before and one after. I am not saying that that would be necessarily wrong, but I think it would behoove us as a group to know what we have come up with internally before we hear the public."

**KROUT** "I agree. I think it would be worthwhile to walk through some of the key issues and I think that we could possibly do that on your February 8 agenda--have a discussion, but then have the hearing on February 22. And I wouldn't expect that you would take action on the 22<sup>nd</sup>. I expect that there would be some hanging issues and you would probably want the subcommittee to take up some issues and try to sweep it out."

**MCKAY** "I won't be here on the 8<sup>th</sup>."

**WARNER** "I won't be here on the 8<sup>th</sup>."

**MCKAY** "But you are going to meet on the 6<sup>th</sup> and 7<sup>th</sup> to finalize it. I don't know if that is enough time, that one day, or not."

**GOLTRY** "We could have a briefing on the 8<sup>th</sup> and we could go through the draft, and any changes that were suggested on the 6<sup>th</sup> and 7<sup>th</sup>, but I would hesitate to do it with your absence."

**KROUT** "We don't have to push it that quickly. I wouldn't see a problem with us, let's say, having the workshop on the agenda the 22<sup>nd</sup>. That gives you a little more time, Donna, so that you don't have to work every evening. Then we could have the hearing the first Planning Commission meeting in March."

**MCKAY** "That's fine with me, but we were trying to meet a time schedule that you guys could."

**KROUT** "That's okay. I just need to explain to the City Manager. That's fine."

**MCKAY** "This part about the 'sex shops', I guess you might say. We took verbatim what the legal department said. We didn't change anything. So you really need to read that carefully. It is pretty thick. They have gone to a lot of trouble there. There are some real problems there. I am afraid what we are going to do might create some more."

**KROUT** "Actually, what they are doing is mirroring regulations that they already have, but they are outside the Zoning Code, and for enforcement purposes, they believe it should be in the Zoning Code. But there was some disagreement at the Subcommittee meeting about whether what was already in the County's resolution, separate from zoning, was a good idea or not. You have a perfect right to be able to tell the County Commission that you don't think so, if you decide that."

**GAROFALO** "Marvin, what arrangement is made to provide whatever it is that we prepare to the public? Do they have to ask for something? They won't know what is going on."

**KROUT** "We have to advertise in the newspaper, and at least it is the Eagle this time instead of the Derby paper. We also have discussed the fact that we probably ought to take these to the District Advisory Boards. And that means, also, that you need to prepare a summary of the highlights, because they are going to have a hard time reading, and I am not sure the District Advisory Board members even want to read all of the details. But we thought there probably was enough meat here that we ought to take it through the District Advisory Boards."

**GAROFALO** "And the interested parties."

**KROUT** "And the interested parties. We will notify them directly. We will ask the County Counselor's office how they would like us to do notification with regard to the sexually oriented businesses, but we know who all of the portable storage container people are and we will contact them directly."

**WARREN** "Have they pretty much been represented by Counsel, what little input from them? I mean the adult entertainment industry."

**KROUT** "We haven't had any input from them."

**WARREN** "I thought maybe you had. The County has."

**KROUT** "Donna, there is one other issue that Susan brought up, which is that the County is having discussions with a committee that they appointed to deal with inoperable vehicles and outside storage. At some point, that is going to have implications for the Zoning Code. It is our strategy to keep that separate from what we are doing now."

**GOLTRY** "Actually, when we met as the subcommittee and talked about inoperable vehicles, just our very last meeting, at that point, we were working under the assumption that we were going to do a little tinkering with the definition to make it more easily enforceable through the court system. Then they had their meeting on nuisances. The County is looking at two aspects of it. They are looking at ensuring that the inoperable vehicle definition does not preclude people from doing bonafide agricultural use where they would have their spare tractors and other things for parts so that they can continue doing that. The other thing that the County Commission charged that committee to look at was to make sure that people who were in agricultural areas could do legitimate composting activities."

At the meeting that I attended, it was primarily represented by a very good committee of people that had been appointed by the County Commission to represent the various agricultural interests, but the public who was in attendance at the meeting were mostly people who have been storing inoperable vehicles in rural areas, but not necessarily for agricultural purposes. So I see that as kind of a 'can of worms' that they are dealing with. I don't know quite how we will proceed on that, because we had a good definition. We worked with the County Counselor's office on it and now this committee is going through and is going to be tinkering with that definition. So we have to have some give and take from them. I don't suppose that answered your question, but I don't know quite where they are going to hear with that committee."

**MCKAY** "We also discussed at length, and it has been on the Commission for a while, this deal of outside storage, outside show area for like Wal-Mart, nurseries, etc. Nurseries are under almost the same category, so we are trying to get a definition for nurseries, separate from that so it can be enforced more so. That might be controversial too, once you start stepping on Dillons and Wal-Marts and all of those toes. It might be controversial also."

**GOLTRY** "Can I kind of summarize the feedback I am hearing? It is that you would like a briefing of the whole MAPC, perhaps on the 22<sup>nd</sup> instead of your next regular meeting. I know I started with a few slides for the Advance Plans Committee on your first day when we were looking at the three major issues related to parking lots and downtown revitalization; core area revitalization-type concepts. Walk through that part and the other main pieces of what is in it. There is a lot of clean up involved in the Zoning Code amendments, but the major issues are the ones that we have already touched on today plus those three items that we have started with. Then, from that point, we would go first to the DAB meetings--the first meeting in March, and then perhaps come back and set up a public hearing. We need to set a public hearing up in advance, but have the public hearing set for the March 8 meeting. Would that sound like a reasonable plan?"

**WARNER** "Everything sounds good to me. I would like to follow up on what Bud said. I don't think we should make a decision the day we have the public hearing. We ought to wait and make a decision later so that we at least show that we have given a respective consideration."

**GOLTRY** "So I will design the briefing that we do on the 22<sup>nd</sup> to be more informative in terms of walking you through the high points of the changes."

**CARRAHER** "Marvin, do we need a motion on that, or is it just consensus?"

**KROUT** "I think you should go ahead and make a motion to authorize the hearing and to have staff work with the Chair on the date."

**MOTION:** That the Metropolitan Area Planning Department authorize a hearing and authorize staff to work with the Chair to set a date for it.

**MCKAY** moved **GAROFALO** seconded the motion.

**KROUT** "It will most likely be March 8."

**CARRAHER** "Are there any questions or commentary regarding the motion on the floor? Seeing none, we will move into a voice vote."

**VOTE ON THE MOTION:** The motion carried unanimously (12-0).

-----  
Item taken out of order:



8. **DR2001-01** - Consideration to authorize February 22, 2001 public hearing on adoption of Preservation Plan.

**CARRAHER** "Do you want to go ahead and discuss the Preservation Plan?"

**KROUT** "Let me suggest on that that we send you a copy of the plan in your next mail out, and then have Kathy Morgan, the Preservation Planner on the agenda to summarize the plan and then ask you, at that point, to call a hearing, instead of doing that today. Then, again, you will be at least familiar with what is in the plan, and what is intended."

6. **CON2000-00060** - The Warren Family, LLC (Ray Warren, Managing Owner/Applicant) request a Conditional Use to permit an accessory apartment on property described as:

The Northeast Quarter (NE 1/4) of Section 20, Township 29 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas. EXCEPT the East 980 feet thereof. Located 3/4 mile east of Rock, south of 95<sup>th</sup> Street South.

**WARREN** "I will excuse myself from voting on this item. I might point out that I am not the owner of this, I am an agent."

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to permit an accessory apartment on a 20-acre unplatted tract located south of 95<sup>th</sup> Street South and ¾ mile east of Rock Road. The accessory apartment would be located in a proposed residential building that will look somewhat like a duplex from the outside, and will replace an existing manufactured home that is to be removed from the property. The purpose for the accessory apartment is to provide a residence for a caregiver in the event that Mr. or Mrs. Warren would need such assistance. Access to the site would be off of an existing private drive. The site plan submitted with the application indicates the home would be setback approximately 170 feet from the centerline of 95<sup>th</sup> Street. There is an existing sewage lagoon located south of the unit's proposed location. The site has access to rural water service. The City-County Health Department will need to approve the use of any on-site services.

The application area is part of a quarter-section section of ground owned by the applicant. In addition to the application area, this quarter section contains home sites, a recreational complex and farm ground. All of Mr. and Mrs. Warren's children have home sites located along Webb Road. The applicant's family uses the recreational complex, located south of the application area. That part of their ownership that is not used for homesteads or recreational purposes is planted to crop production.

All land adjoining or abutting the application area is zoned "RR" Rural Residential, and is either used for residential or agricultural purposes.

The property is located in the City of Mulvane's zoning area of influence and platting jurisdiction. Residential uses located on tracts 20 acres or larger are exempt from platting under Sedgwick County Subdivision Regulations. The Unified Zoning Code permits "accessory apartments" as a Conditional Use in the "RR" Rural Residential districts, subject to the following standards:

1. One accessory apartment is permitted on the same lot as a single-family unit. The accessory apartment may be within the main building or as an accessory building.
2. The appearance of the apartment shall be compatible with the main dwelling and with the character of the neighborhood.
3. The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold.
4. The water and sewer service provided to the accessory structure shall not be provided as a separate service.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential; crop land  
SOUTH: "RR" Rural Residential; private recreation area  
EAST: "RR" Rural Residential; residence  
WEST: "RR" Rural Residential; cropland and residences

**PUBLIC SERVICES:** 95<sup>th</sup> Street South is a paved two-lane county highway. The site has access to rural water district service. No public sewer service is available.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" depicts this area as "rural." The "rural" area is land that is located outside any projected urban service boundary. This category is intended to

accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in general conformance with the approved site plan.
- B. The site shall be developed and maintained in compliance with Art. III, Sec III-D, 6. A. Accessory Apartment standards.
- C. Failure to maintain the site in compliance with conditions of approval shall result in the Conditional Use being null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. All the land in the area is used for large lot residential or cropland. All surrounding land is zoned "RR" Rural Residential. The character of the area is rural.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential. This district is primarily set aside for large lot residential uses and agricultural uses. The site could be developed as zoned. However, to accomplish this applicant's goal, additional acreage and another separate unit would need to be built. That approach would not be an efficient use of land and service facilities.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: No detrimental impacts should be felt by adjoining and abutting property owners as the applicant owns the land on three sides of the application area, and the building is designed to look like a single-family home.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" depicts this area as "rural." The "rural" area is land that is located outside any projected urban service boundary. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services.
5. Impact of the proposed development on community facilities: A negligible increase in traffic.

**MILLER** "This is a request for a Conditional Use to permit an accessory apartment on a 20-acre tract. The applicants actually own a 160-acre parcel that is unplatted. Their desire is to remove an existing manufactured home that is on the site, and replace it with a site-built home that in effect would be a single-family residence with an accessory apartment. Their goal is that in the Warren's golden years, should they need some assistance, they would have the ability to have someone on site to give them some assistance.

Mr. and Mrs. Warren's children all have parcels that front Webb Road, and I think all of them but one have built homes out there. When we had the retreat, the retreat location was approximately here (indicating), that white frame house that we drove by would be there, and this is the home that would be removed and the new home would set approximately over here (indicating), to the west.

This was heard by the Mulvane Planning Commission, and they recommended approval. It is subject to the conditions that are found on Page 3 of the staff report, a, b, and c, that the site be developed and maintained in general conformance with the approved site plan. You can see that there are three different site plans that are attached to the report. Tract B on the first one is the application area. Then on the second one, the aerial, it is Tract B as well, but then on the third one, the more detailed site plan, it is Tract A that is the application area. This is in Mulvane's subdivision authority and they have waived the platting requirements. So, the Conditional Use, if it is approved here and there are no protests, they would not be required to plat the property.

The Zoning Code has four requirements. Those are listed on Page 2 at the bottom. This site appears to meet all of those requirements, and staff is recommending approval. If you have any questions, I would be pleased to answer them."

**CARRAHER** "Are there any questions of staff regarding this item?"

**PLATT** "I want to be clear. The proposed building is not attached to a residence, is that correct?"

**MILLER** "The home that would be built--the new home, is almost a duplex style, it just doesn't have the second garage. Is that what you are asking?"

**PLATT** "No, is it attached to another residence?"

**MILLER** "No. It would be a stand-alone site-built home."

**PLATT** "All right. It is going to look like a duplex. Is it a duplex?"

**MILLER** "Well, essentially, it could be a duplex if someone were to say, wall off the doorway between the two units, it could be defined as a duplex, I suppose."

**PLATT** "So, would the proposed Conditional Use authorize a duplex then?"

**MILLER** "No, technically, it has to meet the conditions that it is an accessory apartment and that are listed there on the bottom of Page 2."

**PLATT** "In other words, a duplex would not be allowed under the Conditional Use?"

**MILLER** "Not under the way it is being requested here, right. He would have to ask for duplex zoning for what we think of as a duplex. This is technically an accessory apartment."

**PLATT** "Don't we usually have a statement from a physician when we are asked to approve one of these?"

**MILLER** "Well, this one is not the same. They are very similar, but not the same as a request for accessory use for someone who has a dependent person. That is what you traditionally see, or you see a lot of those. But in this particular case, this is just strictly an accessory apartment that in the 1996 Code, was built in as a provision, provided that you comply with all of those requirements."

**PLATT** "Can it be occupied by anyone except the caretaker?"

**MILLER** "Yeah."

**PLATT** "In other words, what we are really authorizing then, is duplex zoning for this lot?"

**MILLER** "It looks and smells like a duplex, yes."

**PLATT** "Thank you."

**HENTZEN** "Is this in the county?"

**MILLER** "Yes."

**HENTZEN** "It is not in Derby's district or Mulvane's?"

**MILLER** "It is in Mulvane's area of influence and in their platting jurisdiction, but it is not in either one of their city limits."

**HENTZEN** "Okay. Let me ask you, Dale. There is a residence there now that is going to be removed. Why are we trying to change what it is being used for right now? In other words, if that residence burned down, could they replace it right now?"

**MILLER** "Well, my guess is that, just looking at that manufactured home, it is technically probably a mobile home. It probably was built before 1976 and could not be replaced as it is today. They could bring in a manufactured home and put it on the site. Essentially, it is a one-for-one replacement for what is there today. "

**HENTZEN** "What I am asking is why, when it is used as a residence, has been used as a residence, and will continue to be used as a residence, why are they here applying for a Conditional Use?"

**MILLER** "Because under the Code under single-family zoning, this entire 160 acres is not platted. But it is under separate ownerships. So what they have done, basically, is created a 20-acre tract, which under Sedgwick County rules would be exempt from platting, where you can have a single-family residence on 20 acres without being required to plat. If you look at the first site plan, you can see how they have split up that 160 acres. Some of it is owned individually by members of the Warren family and some of it is owned by the Warren Trust. The way the Code is written, they could put the manufactured home back there today without requiring the Conditional Use, but for what they are requesting, which is the ability, in the future, to have the potential to have a non-relative there, living with them, without changing the zoning for duplex zoning, they need this accessory apartment Conditional Use. It is a subtle distinction, but it is one that the Code provides for."

**BARFIELD** "What was the vote on the Mulvane Planning Commission?"

**MILLER** "I believe it was unanimous."

**CARRAHER** "Are there any further questions of staff? Thank you, Mr. Miller. Now we will hear from the applicant."

**KROUT** "Mr. Warren is here and said he was available to answer any questions that you had. I think he didn't know that he was allowed to stay and represent himself here. He is. Why don't you ask him to come back in?"

**RAY WARREN** "I live at 102 North Brookwood, Derby, Kansas. It is really a lot different on this side of the podium. I would be glad to answer any questions."

**MCKAY** "There have been some questions here about the purpose of this. Would you just kind of explain to us what you are wanting to do? They mentioned something about 'in your old age' or something."

**WARREN** "This is something I have done in the past, in fact I did it when my Mother was entering her later senior years, we built a duplex with the idea that most people in nursing homes today are there because they didn't take their medicine, or they didn't eat properly. In many cases, if you could give them that kind of care, they don't have to be in a nursing home. So that is what I did. I built a duplex. In matter of fact, in that one, I put a door between the two. I did sheet rock past it because we didn't use it, but the intent was to get a nurse to live there and look after her."

This is what my family is looking at. All four of our five kids live out there now and are looking to the future that this would be an ideal situation. So that is our intent--we are going to remove the mobile home that you may see on that map and build us one duplex unit. We felt that this would be better than platting and trying to get the zoning, although I don't think that would be any problem. I think I could get the zoning for it. I don't think I would have any objection out there, but this would give more control to the single unit than if we went for the zoning."

**CARRAHER** "Are there any further questions of the applicant? Seeing none, thank you, Mr. Warren. Now we will move it to the gallery. Is there anyone in the audience wishing to speak in favor of or in opposition to this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. All the land in the are is used for large lot residential or cropland. All surrounding land is zoned "RR" Rural Residential. The character of the area is rural. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential. This district is primarily set aside for large lot residential uses and agricultural uses. The site could be developed as zoned. However, to accomplish this applicant's goal, additional acreage and another separate unit would need to be built. That approach would not be an efficient use of land and service facilities. Extent to which removal of the restrictions will detrimentally affect nearby property: No detrimental impacts should be felt by adjoining and abutting property owners as the applicant owns the land on three sides of the application area, and the building is designed to look like a single-family home. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" depicts this area as "rural." The "rural" area is land that is located outside any projected urban service boundary. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. Impact of the proposed development on community facilities: A negligible increase in traffic.) I move that the request be approved, subject to the following:

- A. The site shall be developed and maintained in general conformance with the approved site plan.
- B. The site shall be developed and maintained in compliance with Art. III, Sec III-D, 6.A. Accessory Apartment standards.
- C. Failure to maintain the site in compliance with conditions of approval shall result in the Conditional Use being null and void.

**HENTZEN** moved, **BARFIELD** seconded the motion.

**PLATT** "I am going to vote against the motion. I think the concept of an accessory unit to provide care for an occupant is marvelous idea, or an accessory unit so that someone's elderly parent can live on the grounds and get some assistance from their children is a great idea. Those things can be done in an area that is zoned for a single-family house. I think we have made a great step forward when we started using them. I don't think that concept is one that ought to be tampered with in terms of trying to do something else."

I think that what we have here is a subterfuge that is turning a single-family lot into a lot with three units on it. It will have a single-family house and a duplex on a lot that is supposed to have one dwelling unit. I think that this is the kind of subterfuge that certainly will undermine our legitimacy when we attempt to use this concept correctly. I will vote against it."

**CARRAHER** "Are there any further questions or commentary. Seeing none, we will move into a voice vote."

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor. Platt opposed. Warren abstained.

7. **CON2000-00061** - Helen L. Bergkamp Living Trust (Owner); Horizon Telecommunication and Cricket Communications Inc. (Applicants) Ferris Consulting c/o Greg Ferris (Agent) request Conditional Use for a wireless communication facility on property described as:

The part of the SE 1/4 of Section 18, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. Corner of said SE 1/4; thence N 00' E, along east line of said SE 1/4, 1540 feet; thence S 90'W, 1334 feet for a place of beginning; thence S 90'W, 70 feet; thence N 00'E, 70 feet; thence N 90'E, 70 feet; thence S 00'W, 70 feet to the place of beginning. Approximately 1/4 mile north of 53<sup>rd</sup> Street North and approximately 1/4 mile west of Rock Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** A Conditional Use (CON2000-00031) to permit the construction of a 190-foot monopole tower on property located approximately 1/2 mile north of 53<sup>rd</sup> Street North and approximately 900 east of Rock Road was approved by the Bel Aire Planning Commission on August 14, 2000 and by the Metropolitan Area Planning Commission on August 31, 2000. One of the conditions of approval for that tower was that it be developed in compliance with all federal, state, and local rules and regulations. Since the applicant was unable to receive approval from the Federal Aviation Administration (FAA) for a 190-foot tower at the approved location (see attached correspondence), the applicant is requesting a Conditional use to permit the construction of a 190-foot monopole tower at an alternate location.

The applicant is seeking a Conditional Use to permit the construction of a 190-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "SF-20" Single-Family Residential. Wireless Communication Facilities over 65 feet in height in the "SF-20" Single-Family Residential zoning district may be permitted with a Conditional Use.

The proposed tower would be sited on a 4,900 square foot area located approximately 1/4 mile north of 53<sup>rd</sup> Street North and approximately 1/4 mile west of Rock Road. Access to the site would be from Rock Road via a 25-foot wide access and utility easement. The applicant's site plan (attached) depicts a 70-foot by 70-foot compound with the tower located in the center of the compound and the ground-level equipment located in the eastern portion of the compound. The compound is shown as being enclosed by an 8-foot high chain link fence with barbed wire. The site plan shows screening of the compound with densely planted evergreen trees around the entire compound. The site plan also shows three trees north of the compound to provide screening for the tower from residential properties to the north.

The applicant indicates that the proposed wireless communication is part of a planned initial build-out of a cellular phone system for Sedgwick and Butler counties by Cricket Communications, Inc. The applicant's justification for the request (attached) indicates that this site is necessary for Cricket Communications, Inc. to provide cellular phone coverage along Highway K-254 east from Wichita and that no tall buildings or other structures in the vicinity can accommodate the applicant's communication needs.

The character of the surrounding area is rural, with the nearest residential development being single-family residences on 5 acre lots in the Heritage Hill Estates Addition located approximately 1/4 mile to the north. There is also a farm-related, single-family residence located approximately 1/8 mile south of the site. The properties immediately surrounding the site are zoned "SF-20" Single-Family Residential and are used for agriculture.

Due to the site's location in proximity to Jabara Airport, planning staff contacted the administration at Jabara, who indicated that the site could possibly interfere with the flight pattern of a proposed runway at Jabara; however, the airport staff will not be certain of any negative impacts on the operations of Jabara until the FAA has reviewed the location of the requested monopole. Therefore, the airport staff requested to review the FAA's decision regarding this monopole prior to the issuance of a building permit so that the airport staff may have the FAA modify their decision if the airport staff feels the FAA has reached their decision in error.

The site also is located within Area C of the Wichita-Sedgwick County Airport Hazard Zoning Map, which requires a permit exemption for structures (such as the proposed 190-foot high monopole) that exceed 150 feet in height. However, the proposed monopole appears to lie beneath the ceiling established on the more detailed topographic maps associated with the Airport Hazard Zoning Map.

**CASE HISTORY:** The site is unplatted. The proposed wireless communication facility is an alternate to the 190-foot high monopole tower approved as a Conditional Use (CON2000-00031) in August 2000.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Agriculture  
SOUTH: "SF-20" Agriculture  
EAST: "SF-20" Agriculture  
WEST: "SF-20" Agriculture

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Rock Road, a two-lane paved section line road with 1997 traffic volumes of approximately 550 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Rock Road will increase to approximately 3,900 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. Approval is subject to the agreement in writing by the property owner that Conditional Use CON2000-00031 is null and void.
- B. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. The monopole shall not exceed 190 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- F. A landscape plan shall be submitted for approval by the Planning Director that maintains the existing trees east of the compound on the parent tract and provides shade trees to be planted and maintained every 30 feet parallel to the north, south, and west boundaries of the compound and densely planted evergreens to be planted and maintained around the entire compound.
- G. An Airport Hazard Zoning Permit for Area C shall be acquired by the applicant prior to the issuance of a building permit for the wireless communication facility.
- H. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airports for the City of Wichita, who shall concur with the conditions of FAA approval prior to the issuance of a building permit.
- I. If required by the FAA, the monopole shall be constructed with a red aircraft warning light. No strobe lights shall be used unless approved by a variance. There shall be no lighting of or on the monopole if it is not required by the FAA.
- J. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- K. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- L. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- M. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural, with the nearest residential development being single-family residences on 5 acre lots in the Heritage Hill Estates Addition located approximately ¼ mile to the north. There is also a farm-related, single-family residence located approximately 1/8 mile south of the site. The properties immediately surrounding the site are zoned "SF-20" Single-Family Residential and are used for agriculture, which is typically a compatible use with wireless communication facilities.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-Family Residential and is currently used for agriculture. Wireless communication facilities in excess of 65 feet in height in the "SF-20" Single-Family Residential zoning district may be permitted as a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently used for agriculture. The closest properties developed with non-agricultural uses are single-family residences on 5 acre lots located approximately ¼ mile to the north. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced distance separating the residential uses and the proposed wireless communication facility and by the landscaping required by the conditions of approval.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility complies with the compatibility height standard of the Uniform Zoning Code since it is located more than 190 feet from the nearest lot line of property zoned "TF-3" or more restrictive.
5. Impact of the proposed development on community facilities: FAA approval with the concurrence of the Director of Airports for the City of Wichita should ensure that the proposed monopole does not detrimentally impact the operations of Jabara Airport.

**PLATT** "I need to step down from this item as president of the Board of Directors of a firm that rents out space to antennas."

**CARRAHER** "Okay, thank you. For the record, Dr. Platt is excusing himself from this item. With that in mind, Mr. Knebel, the floor is yours."

**KNEBEL** "Commissioners, this item before you today is a Conditional Use request for a wireless communication facility on property that is zoned "SF-20' single-family residential. This particular request is a little bit unique in that the applicant received approval back in August from this body for a 190-foot tower. I don't believe I am going to be able to show you anything that indicates the location, but it is located east of Rock Road and about half a mile north of 53<sup>rd</sup> Street North.

That application was subject to approval from the Federal Aviation Administration. That body approved the tower at that location; however not the 190-foot height that the applicant is seeking. Therefore, the applicant has come back with an alternative site, which is located about a quarter of a mile north of 53<sup>rd</sup> Street and a quarter of a mile west of Rock Road in an area where they have indications from their consultant that they will receive approval from the FAA for a 190-foot high tower. They are proposing to construct a monopole tower. The site itself is 4,900 square feet and it is located immediately adjacent to a 100-foot wide natural gas pipeline easement.

The applicant has indicated that this requested site is needed to provide coverage primarily along K-254, but also some of the east Wichita area. You can see on the site plan, in the purple and gray colors that there is very poor coverage or no coverage at all. The green and yellow colors provide very strong coverage. You can see that with the addition of that tower, it would expand their service area by several square miles.

The character of the surrounding area is pretty much like this with the exception of the properties that are located a quarter of a mile to the north. One quarter to the north, there are some houses on some large, five-acre lots in the Heritage Hills Addition. The other surrounding properties are very rural. "

**GAROFALO** "Could you go back about three slides? What is that I can see, is that a tower?"

**KNEBEL** "There is presently, and I think I may have mentioned it in the report--if not, I should have--there is a high wire electrical transmission line that runs through this area."

**MCKAY** "Oh, yeah, KG&E."

**KNEBEL** "This has approximately 100-foot poles--maybe a little bit taller than that--on it. The previous tower that was approved back in August was actually going to be located in close proximity to one of these and would be right up against it. This tower request is actually going to be located 1,000 feet or so south of those power poles."

**GAROFALO** "Okay. So that is not something that could be used?"

**KNEBEL** "It is not 190 feet high. No. It is possible, I guess, that you could try to replace it with something, but then in that instance, it would be quite a bit closer to the residential properties than what is proposed. It probably would take even longer to get done.

This site is located in relative proximity to Jabara Airport. Jabara is a couple of miles to the southeast, maybe 2-1/2 miles. Because of that, the Planning Staff did contact the airport staff. They indicated that they were uncertain as to the impacts of this particular request on the operations of Jabara and would prefer to review the FAA study and approval on conditions and just react to that. We tried to encourage them to tell us right now what they wanted, and we really couldn't get that out of them, so we have put a little condition in here that gives them quite a bit of say in this. You will want to give that some discussion when I go over the conditions of approval.

The site is also located within area C of the Wichita/Sedgwick County Airport Hazard Zoning map. That area C requires a permit exemption for any structures that exceed 150 feet in height, and that is one of the conditions of approval. As with these past cases, we have reviewed this request against the Wireless Communication Master Plan to see if it conforms to

the location and design guidelines that are in that plan and we feel that it does. We have recommended that the request be approved, subject to a number of conditions. The first and foremost of which being that the applicant for the previous tower on CU2000-00031, that this is an alternative site to agree in writing that that previous Conditional Use, which has been approved and placed in effect be declared null and void so that you will end up with one tower in this area instead of two. I think the applicant is fully willing to go along with that. We have some of the standard conditions about erecting the tower within one year, the fact that it be a monopole and have the ability to carry four carriers. We are looking for a landscape plan to provide some shade trees around the compound to eventually screen some of the lower portions of the tower from ground level view. We are looking for some screening around the compound for ground level equipment if, in the future, this is some day in the middle of a residential neighborhood, which is possible. We are requiring FAA approval and an Airport Hazard Zoning permit.

On Item H, you might want to take a look at the way I have worded that. Basically, what we have said is that we would like for the Director of Airports for the City of Wichita to concur with the FAA. In the past, I think you have had staff from the airport to come to you and say that the FAA has made what they consider errors in their approval process, which after being pointed out to the FAA by the airport staff, the FAA has then either modified or rescinded their approval and they concerned that errors such as that would occur again in the future. The other conditions listed are standard ones for this type of application. I won't go over those. This recommendation is based on the findings on Pages 5 and 6 of the staff report, and I am available for questions."

**CARRAHER** "Are there any questions of staff regarding the item?"

**BARFIELD** "What were the reasons given by the FAA for their disapproval?"

**KNEBEL** "I will have to let the applicant address that. I was not informed of those."

**BARFIELD** "Okay. My second question. Did you have any comments from the Jabara officials for the previous location?"

**KNEBEL** "We did. On the previous case they basically said the same thing, that they wanted to see the FAA approval and their conditions and react to them."

**GAROFALO** "Attached to the report are a bunch of e-mails from people to people. I am not sure that I follow any of that, but was this in regard to the old site?"

**KNEBEL** "That is in regard to the old site. That is what the applicant provided when I requested some documentation of the FAA's failure to approve 190-feet. What the applicant indicated was that they only send out approval letters. If you don't agree with what they are doing, I guess they don't send anything out in writing. This was what was provided. It says there on the first one that there will be no determination for Cole, which is the owner of the property, on the previous Conditional Use because the applicant did not accept 115 feet as height, which was the maximum that the FAA was willing to approve."

**OSBORNE-HOWES** "Did the applicant or agent say that they went along with your recommendations?"

**KNEBEL** "I think when you hear from the applicant, I think they would like to see some changes on Item F, regarding the landscaping, and Item H, regarding the FAA approval. I will let them address that."

**GAROFALO** "I have one more question. Mr. Knebel, could you address this protest petition?" (Indicating)

**KNEBEL** "That is the other item that I need to mention to you. There is a protest petition that is filed by a number of property owners in the Heritage Hills Estates Addition. I believe those property owners are here in the room as well to speak to you. There is not a whole lot of information on there. I have talked to a few of them on the phone and primarily they are just concerned with the visual impact of the tower and the fact that many of their properties are platted as such that they have back yards that fact that direction. That is 10 or 11 properties. I suspect that others would be able to see it from a distance as well."

**GAROFALO** "What is the distance?"

**KNEBEL** "A little less than a quarter of a mile. (Indicating) I believe this is the quarter mile line."

**HENTZEN** "Scott, if those people up there, well are they in the area that would fit a valid protest?"

**KNEBEL** "They are not. The 1,000 foot notification does not include any of the properties within the Heritage Hills Addition."

**BARFIELD** "When you say the 1,000 notification area--I was under the impression before that on these cases it was 200 feet."

**KNEBEL** "In the city that is correct. It is 1,000 feet in the unincorporated area."



**CARRAHER** "Are there any further questions of staff regarding the item? Thank you, Mr. Knebel. We will now hear from the agent."

**GREG FERRIS** "Mr. Chair, members of the Planning Commission, I represent Horizon Telecommunications, Cricket Communications and the landowner on this application. We are asking that this application be approved to replace a tower that we located just to the east of this location. I will give you a little background on the FAA since the questions did come up.

The FAA procedures are very complex. I will try to simplify them as much as I can. Horizon originally applied for 190-foot approval from the FAA. They received that approval for the FAA at 190 foot. When Cricket, later, through a different company, applied to allow their equipment--you have to apply both ways--and this was very early tower and now we were applying for them together, then we were applying for them separately. When they applied for the tower, they applied through a different company. That company raised some issues. Don't ask me why, but they raised some issues with the FAA that caused the FAA to remove our approval and then issue a different approval at a different height.

If we were to build a 115 foot tower there, I would be back here asking for a 160 or 170-foot tower somewhere to the west of this area to get the coverage that we would need. A 110-foot tower would be worthless really in an area that is that rural. You don't want to build 110 or 120 foot towers in rural areas because then you would have a bunch of 110 or 120-foot towers versus one 190-foot tower, which basically covers a 4 to 5 mile area. The 100 or 120 foot towers that we do in the urban areas, they cover more like a 2-mile area. So it was determined that the best course of action would be to replace the tower that had been approved.

We do concur with staff comments and believe that this application is in concurrence with the Wireless Master Plan. We only have two exceptions. I have noted those and I will go over them real briefly. I have talked to staff and I know on one of them, I think we have reached an agreement. On the other one, I am not sure but I don't think they would have any problem with the second part of mine.

As far as the landscaping around the compound, the landowner has asked us to use a solid wood fence instead of trees. This is a cattle-grazing area and he is afraid the cattle will get into those trees, knock them over, cause problems, and it also may cause problems for his cattle. The plan does call for either solid screening of evergreens or a wood fence, so we would ask that Item F be changed to a solid wood fence on three sides. It is a little different than what I have here, but Scott and I just discussed it and he is comfortable with that. My applicant is comfortable with that. The fourth side is a solid hedgerow and wouldn't need screening because it is already screened with trees.

As far as the Director of Airport's approval, we first of all don't think it is necessary. They have comment rights. I did personally speak with the Director of Airports on the other site and he expressed to me that he had no concern and believed it had no impact with Jabara. However, if the Planning Commission feels it is very important that the Director of Airports have input into this, we would ask that the language be added that I have mentioned here. It says that the concurrence of the Director of Airports shall be granted within 5 days of the receipt of the FAA approval and shall not be unreasonably withheld. If the Director Airports does not respond to the Director of the Director of the Metropolitan Area Planning Department within 5 days, his concurrence will be assumed.

That is, just for staff to be able to look at that, and it will be both the Director and the Engineer, and 5 days is adequate for them to make comments to Marvin, and if they have any issues, they can certainly put those forward. If they feel that it isn't that high of a priority, then it must not be that big of a deal if they can't get to it. So we would ask that this would be handled in a timely manner and we believe that 5 days for them to review those and to get it to Marvin would be appropriate. Obviously, we don't think it is necessary, because I think that the FAA, particularly on a site that is coming in after they are already aware of an area that they shouldn't have any issues. But we are not going to argue about that.

Regarding the property owners to the north, there is a hedgerow along there, there; there is another hedgerow running north and south. This area really does fit the Wireless Plan. When we had the other tower, because it was under some of the old rules, we had to notify from the access road that went out to Rock Road and we notified some of the property owners in this area. We had no protests at that time. Obviously, they have the right to protest it today. I don't have any issues with that, but I believe that a monopole versus the lattice and guy towers that people are used to seeing, at a quarter of a mile will not have a visual impact on this area to the north. That is why the notification areas are set up that way. It is a considerable distance and I believe it will not have any impact. It certainly will not have any impact on the property values. These have been shown throughout the Country not to impact property values.

If we determine that we need to get into the whole area of RF radiation that has come up in the past, I would tell you again that it not a venue of the Planning Commission. But I do have my RF Engineer here, and this RF Engineer does speak English. I apologize for the last time. Mark was ill and had to go to the doctor, but he will be able to address you a little more clearly and answer your questions to a little better understanding.

I am not sure, Mr. Garofalo, if I answered your questions. The reason we provided the background on the other tower is that Scott had asked us to give him as much information as we had. It is a fact that the FAA will not give you anything in writing, telling you that they are going to accept that unless you accept what they have given you. Since we are not going to accept 110 feet because it doesn't do us any good in this area, they will not give us anything in writing, telling us that that is what it is. They give you that verbally. Believe me, we wouldn't be here to the expense of re-surveying a property. We had a lease, we had an approval, we had the building permit and were ready to go. We wouldn't be going through

this process again if the FAA hadn't made it necessary. I would be glad to answer any questions. We concur that this is an appropriate application."

**MCKAY** "Mr. Ferris, you talked about the fence because of the cattle, and on the one side there is a hedgerow or something. Is there a fence along that hedgerow also?"

**FERRIS** "There is. We will also put a chain link fence there, but just not a solid wood fence."

**MCKAY** "So you are going to put some kind of fence on the east side?"

**FERRIS** "You bet. It will be a chain link versus the wood fence because if we put a chain link fence, the plan requires screening around all sides, we will have screening from the hedgerow and then we will have a solid fence on the other three sides."

**CARRAHER** "Are there further questions of the applicant?"

**BARFIELD** "Can you tell me the height of the screening?"

**FERRIS** "The height of the screening? Do you mean the screening wall?"

**BARFIELD** "Yes."

**FERRIS** "It will be an 8 foot wood fence. In the hedgerow there, some of those trees are probably 30 to 35 feet--the highest ones. A lot of them are probably 15 to 20 feet."

**BARFIELD** "Okay. Did I understand you to say that the FAA had approved a 190-foot tower at the previous location?"

**FERRIS** "That is correct."

**BARFIELD** "What is the distance between that location and your new location?"

**FERRIS** "It is probably half a mile to the west. This is the area that they told us, we went to the company that basically had gotten this one denied, and let them run this through. They don't issue a final determination until you get all of your approvals and submit everything, but they have assured us that this will meet the recommendations of the FAA."

**WARNER** "I have a question. This is indicating that there is going to be a red light at the top of this tower. You also made some comment about the fact that there would be no strobe lights unless something else happens."

**FERRIS** "You can't put a strobe light in anyway unless you go through the Board of Zoning Appeals. The red light is a very small warning light. It doesn't flash. The Ordinance is very clear that you cannot put a strobe light on any tower anywhere of any kind unless you go through the Board of Zoning Appeals. Even if the FAA told us we had to, we couldn't do it without going through the Board of Zoning Appeals."

**OSBORNE-HOWES** "Under 'H', they talk about 'within 5 days of receipt'. Do you mean 5 business days?"

**FERRIS** "Five business days is fine. I did leave out as I read that, 5 days of the receipt, not from us, but from when the Airport Director receives the determination."

**OSBORNE-HOWES** "I am just curious if there is a reason to put, at the end of the sentence 'the concurrence of the Director of Airports, etc.' to put 'and shall not be unreasonably withheld'. Is there any reason for actually putting that in there?"

**FERRIS** "We think there is. I mean, if he has some valid reasons, we don't have any problem with that, but we would certainly want them to be strictly things that are valid. I know Bailis and I don't that it is a big issue, but that is kind of the way legal people operate. We had to run those through legal people."

**OSBORNE-HOWES** "You are talking about the time-frame, right?"

**FERRIS** "Right."

**OSBORNE-HOWES** "I guess I don't understand 'and shall not be unreasonably withheld' if we put 5 business days."

**FERRIS** "I will speak for the attorney. The idea there was if he doesn't give us the approval, he can't just say 'well I don't want them to have it'. He would have to give reasons."

**OSBORNE-HOWES** "So you want a rationale. That is really what you are asking for."

**FERRIS** "Right. That they would have to have valid reasons for him to withhold, or if he sends it to Marvin and says 'no, I don't want you to approve that', according to this, this Conditional Use cannot be accepted by the Planning Department. So if he is going to have that kind of authority, I want him to make sure that those reasons are spelled out, justified in

some type of a form in that he can't just send Marvin a letter and say 'no, I don't think they ought to be able to build that tower'. We don't believe it would be fair or right."

**OSBORNE-HOWES** "So that is really what you are asking for, as opposed to 'and shall not be unreasonably withheld'."

**FERRIS** "That the approval shall not be unreasonably withheld."

**OSBORNE-HOWES** "Arbitrarily?"

**FERRIS** "Arbitrarily is fine. However you want to word it. That is not a big issue to me."

**CARRAHER** "Are there further questions of the applicant? Seeing none, thank you, Mr. Ferris. We will not move into the gallery. Is there anyone here..."

**KNEBEL** "This is a little out of order, but I did leave out something that I think is important for me to address. This item is in the influence of the City of Bel Aire. Bel Aire did meet a week ago Monday in an attempt to hear this case. Their Planning Commission failed to receive a quorum, so they have not made a recommendation to you on this item. It is within your purview to defer your action until you receive a recommendation from the City of Bel Aire Planning Commission. It is not a requirement of the Code, but I do want to point that out to you that they would be willing to hear this on January 22, I believe. The applicant has indicated that they prefer that you take the action today rather than to defer it for a recommendation from Bel Aire. I wanted to point that out."

**CARRAHER** "Thank you, Mr. Knebel. Are there any questions of Mr. Knebel regarding this new information? Seeing none, Mr. Ferris, did you want to address this?"

**FERRIS** "I have a couple of minutes, so I might address that a little bit since he didn't bring that up. We believe that the Code is very clear that Bel Aire should have the right to review this. They had the right, and through whatever reason did not have that time really, because this tower has been delayed for a number of months. That isn't your fault, we will take the full blame for that. But time is important to us. We would like to move forward. We believe that you have the authority to approve this under the Code. We believe that this is a public hearing and most of the people that were at the Bel Aire hearing are here."

While this is in the 3-mile influence of Bel Aire, it really is very much closer to the Wichita area and probably will be in Wichita rather than Bel Aire some day. So we believe that you really are the appropriate body to act on it. So we would ask you to do that today. If you decide that you are going to not do that, I would like to ask if you would let me make one comment to that before you do that."

**CARRAHER** "Are there any questions of Mr. Ferris?"

**WARREN** "I think I read in here somewhere where the previous application was unanimously approved."

**FERRIS** "That is correct. It was unanimously approved by the Bel Aire Planning Commission."

**WARREN** "So it kind of an assumption that they don't have any big, strong objection."

**FERRIS** "I wouldn't want to make that assumption, but they did approve the other one unanimously."

**OSBORNE-HOWES** "Do you have the number of neighbors opposed to the first one?"

**FERRIS** "I don't believe we had any, even though we notified some of them. I haven't heard the neighbors this time, so we will hear what the different positions are."

**OSBORNE-HOWES** "I would just hate for us to assume that this would be the same if they are really two different towers. And will this ultimately be heard by the County Commission?"

**FERRIS** "Only if it is denied or protested."

**OSBORNE-HOWES** "Only if it is denied or protested."

**CARRAHER** "Are there further questions of the speaker? Thank you, Mr. Ferris. We will now move this back to the gallery. Is there anyone in the audience who is wishing to speak in favor of the item? Is there anyone who would like to speak in opposition?"

**LARRY PARKE** "I live at 7200 Millstream Road. The presentation that I saw here this afternoon was a very good presentation. If you remember, it was snowing outside yesterday. Today, it is snowing in this Commission room. I do not feel that the homeowners' have been adequately represented because the pictures that I saw here were taken through a hedgerow. It is not indicative of the 23 homeowners that live in that area who have homes in the price range of \$200,000 to \$300,000, with a few more yet to be built. I don't think it was properly addressed that Bel Aire is more indicative of this area because the City of Kechi is just across the street of K-254, and there will be housing subdivision going in there."

There is a 190-foot tower, I believe, on Caster's property, which is a mile north of K-254 on Woodlawn. That tower is a 190-foot tower, and it has three red lights on it. Now, if you were living 1,000 or 1,200 feet from this tower, and you had three red lights going off and on all night long, would that not flash and show up in your bedroom, and would you be able to sleep? I am not as concerned about the property values of this area being affected by this tower. I am concerned about the future growth of the properties to the east on Rock Road, which there has been some conversation that those will go into homes eventually. My question is why can't this tower be built back where the original site was, or thought of, half a mile to the west?

Another concern is, I invite you to drive through our subdivision and see whether you have been properly influenced here as to the rights of the homeowners'. The other thing that has not been addressed, even though we have talked a great deal about the FAA and their requirements for Jabara. I have all kinds of ultra-light and small aircraft, as well as the McConnell aircraft flying over my house constantly. They are not only going into the Jabara Airport, they are going into the Beech Airport and to the McConnell Airport. I believe, gentlemen and ladies, that what you have heard here today is a 'snow-job'. I do not believe that you have been given all of the facts, and I invite you into our subdivision to see what the facts really are. Thank you."

**WARREN** "Could I get some idea where this development is in relation to that? Can you show us on that map?"

**PARKE** (Indicating) "This development is right across here and down another quarter of a mile. There are 23 homes of which you are only seeing 7 lots there. There is a subdivision that is under development just north of K-254 Highway, which is not impacted by this too much. But I understand that also the property on the east side of Rock Road will be developed eventually into homes."

**CARRAHER** "Are there any further questions of the speaker? Thank you, Mr. Parke. Is there anyone else who wishes to speak in opposition to this item?"

**LINDA DAY** "I live at 7425 Oak Tree Lane, which is (indicating) here. This is our lot. We didn't hear about this tower until last Thursday when Bel Aire was having their meeting. The Debros is a family out there that just called on this rezoning sign that was out there. So we heard about it and we were just kind of shocked. We lived out there and we enjoy the beauty of just being out there in the country. We do have those power lines that are an eyesore, and then when we heard about a 190 foot tower, we thought 'oh, my goodness'. Then we thought that maybe it was too late to do anything about it.

But I went around to all of the neighbors the last two evenings to see what they thought about it. Everybody but two houses was really upset about it and thought it would be an eyesore. We were talking about that tower with the red blinking lights, and not only during the evening, but during the day, driving down Rock Road, and there is going to be more and more traffic and more and more houses out there, and I think it is going to be an eyesore. Why not go a little bit further away from where there is going to be neighborhoods? Maybe on property where there is a lot more acreage.

I think it will devalue our property. If I was looking for a house and I saw this big tower, I don't think I would be too impressed. I do think it will devalue our property. Like I said, I did have petition signed. I thought it was within a 1,000 radius, but maybe it is going to be 1,001 by the sounds of it. But we the people in that neighborhood are just real upset about it and we really disapprove of this."

**CARRAHER** "Are there any questions of the speaker? Thank you, Ms. Day. Is there anyone else wishing to speak in opposition to this item? Seeing none, we will move it back to the applicant for the rebuttal if they so chose to exercise it."

**FERRIS** "Thank you, Mr. Chair, I will be very brief. I would like to say that the Caster tower is higher than 190 feet. Scott, do you know how tall that is? I think it is more like 250 feet. It is a different type of tower. It has a lot different requirements for the FAA.

I will let Mark try to explain the strobes and lights. We have had this discussion. We are not talking about the kind of flashing lights that appear. Those are strobes. This is a solid red warning light. It is not intrusive; it is not noticeable unless you are really looking for it. Monopoles are different than that tower. That tower has a different look. If you get very far away from Monopoles, you can hardly see them in the background. That is why we make them gray, they blend into the horizon. That is why staff makes us do monopoles versus the cheaper lattice towers. We do that because we really try to be good neighbors when possible.

I do want to point out, since that was brought up, that those are different towers. That one is considerably taller. It is a guy tower and is considerably tower. Unfortunately, when they built that tower, and Marvin and I have had this discussion, we are now trying to correct the faults of ten years ago, when they built towers for just their own use, and now we are building towers for multiple use. That tower does not structurally hold anything but what is already there. I would be glad to answer any questions, but I did want to point out that fact. That area is outside of the 1,000-foot range. I believe you have been provided with surveys and drawings that show you what the scale is and you can see how far that is if you want to."

**BARFIELD** "This tower, am I correct, will provide space for 4 carriers?"

**FERRIS** "It will hold 4 carriers, yes, sir."

**CARRAHER** "Are there any further questions of the applicant? Thank you, Mr. Ferris. We will now move it back to the Commission. What is the pleasure of the Commission?"

**OSBORNE-HOWES** "I sure would like to hear what you all say. I think, at this point, my only concern is that we haven't heard from Bel Aire, and there is a situation where there are a lot of people who are not happy with it and might like to have an opportunity to talk to Bel Aire about it. I just wonder if there are any other comments about that."

**GAROFALO** "On the Bel Aire question, staff, when do they meet again, do you know?"

**KNEBEL** "Well, they indicated on December 8 when they met, that they were willing to have a hearing on the 22<sup>nd</sup>, which would be Monday and would then be able to provide you with a recommendation for the 8<sup>h</sup> of February. I have been trying to confirm that date with them since that time. I haven't been able to get a confirmation, but that was the indication at the time was that they were planning on meeting on the 22<sup>nd</sup>."

**GAROFALO** "My only comment would be that since this is in the influence of the Bel Aire area that maybe we should give them the opportunity to discuss it, at least."

**CARRAHER** "Are you wanting to put that in a form of a motion?"

**MCKAY** "What if they don't have a quorum next Monday again?"

**GAROFALO** "Well, if they wouldn't have a quorum next Monday, then that would be it. I will put it in the form of a motion."

**MOTION:** That a decision on the item be deferred until the next Planning Commission meeting, giving the Bel Aire Planning Commission a chance to discuss it.

**GAROFALO** moved.

**CARRAHER** "Would you like to put a date on that, sir?"

**GAROFALO** "Well, if their next meeting is January 22<sup>nd</sup>."

**KNEBEL** "Well, that would be a specially called meeting that they indicated that they would be willing to have for just this case. Their normal meeting is actually after your February 8 meeting."

**GAROFALO** "Well, provided that Bel Aire calls a special meeting by the end of the month."

**CARRAHER** "Is there a second to Mr. Garofalo's motion?"

**OSBORNE-HOWES** "I would second it just for discussion, but the only way I would is if we would say that we would put this off until the next meeting. If they don't have that special meeting, then they would lose their opportunity."

**GAROFALO** "Yeah. I want to move it on, but I think we should give them the opportunity to at least discuss it if they want to."

**OSBORNE-HOWES** seconded the motion.

**MICHAELIS** "I am not in favor of doing that. They had their opportunity. They knew it was going to be on the agenda the last time but they couldn't get enough people to show up for it. They did approve it the first time around, and to definitely say an indefinite period of time, I think is totally unreasonable. If they come along and have a special meeting and nobody shows up and then another special meeting and nobody shows up, that is not fair to the applicant. You are saying until their next meeting? Who knows when their next meeting will be."

**GAROFALO** "Our next meeting."

**OSBORNE-HOWES** "Until our next meeting."

**MICHAELIS** "Okay, I'm sorry, I thought you meant their next meeting."

**GAROFALO** "No. We don't want to delay it that long. There would be no point in that."

**HENTZEN** "I concur with the idea that they had their chance. If they can't get a quorum, and if I also feel that the influence of their unanimous approval of the first one says that we ought to put it off. I think we ought to look at the facts before us today and vote it up or down. So I will be opposing the motion that was made."

**WARREN** "Well, I am going to oppose the motion on the same basis that Commissioner Michaelis and Commissioner Hentzen have just pretty much outlined."

**BARFIELD** "I think I would feel better if we had, even the fact that they didn't have a quorum, if we had some type of communications of the Mayor of Bel Aire or the City Manager of Bel Aire, asking us to delay this for a week or two, I would feel better about it. But they didn't have a quorum, and they haven't sent us any communication asking us to postpone this, and I feel that we should move forward."

**JOHNSON** "Scott, were you at the meeting at Bel Aire?"

**KNEBEL** "Yes, I was there."

**JOHNSON** "And this item was on the agenda?"

**KNEBEL** "Yes, it was on their regular agenda. They actually had several items on their agenda that they failed to have a quorum for."

**JOHNSON** "Was there any discussion about this item? There were several residents there. The applicant made a short presentation; the Bel Aire Planning Commissioners asked questions. They allowed the people who came to make some statements, but there was no formal action taken."

**JOHNSON** "And no comments made by any Commission members?"

**KNEBEL** "About the only comment that I can recall the Commission members making was some concerns over the lighting, similar to what was made here by one of our Commissioners."

**CARRAHER** "Are there any further questions or commentary regarding the motion on the floor? Seeing none, we will move into a voice vote. This is a vote for deferral."

**VOTE ON THE MOTION:** The motion failed with 2 votes in favor (Osborne-Howes, Garofalo) and 10 in opposition (Marnell, Carraher, Johnson, Hentzen, Michaelis, Barfield, Warren, Lopez, Warner and McKay). Platt abstained.

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is rural, with the nearest residential development being single-family residences on 5 acre lots in the Heritage Hill Estates Addition located approximately ¼ mile to the north. There is also a farm-related, single-family residence located approximately 1/8 mile south of the site. The properties immediately surrounding the site are zoned "SF-20" Single-Family Residential and are used for agriculture, which is typically a compatible use with wireless communication facilities. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-Family Residential and is currently used for agriculture. Wireless communication facilities in excess of 65 feet in height in the "SF-20" Single-Family Residential zoning district may be permitted as a Conditional Use. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently used for agriculture. The closest properties developed with non-agricultural uses are single-family residences on 5 acre lots located approximately ¼ mile feet to the north. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced distance separating the residential uses and the proposed wireless communication facility and by the landscaping required by the conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility complies with the compatibility height standard of the Uniform Zoning Code since it is located more than 190 feet from the nearest lot line of property zoned "TF-3" or more restrictive. Impact of the proposed development on community facilities: FAA approval with the concurrence of the Director of Airports for the City of Wichita should ensure that the proposed monopole does not detrimentally impact the operations of Jabara Airport.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. Approval is subject to the agreement in writing by the property owner that Conditional Use CON2000-00031 is null and void.
- B. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. The monopole shall not exceed 190 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- F. An Airport Hazard Zoning Permit for Area C shall be acquired by the applicant prior to the issuance of a building permit for the wireless communication facility.
- G. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airports for the City of Wichita.
- H. If required by the FAA, the monopole shall be constructed with a red aircraft warning light. No strobe lights shall be used unless approved by a variance. There shall be no lighting of or on the monopole if it is not required by the FAA.
- I. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- J. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- L. Any violation of the conditions of approval shall render the Conditional Use null and void.

**MARNELL** moved, **WARREN** seconded the motion.

**OSBORNE-HOWES** "Can I get a clarification about the changing on Item 'H'? What are you changing that to?"

**MARNELL** "On the third line up from the bottom, that ends with the City of Wichita, and there is a comma, who shall concur. Instead, I would replace that comma with a period and strike the remainder."

**OSBORNE-HOWES** "I don't know where that is."

**MARNELL** "It is in the staff comments, under Item 'H'."

**GAROFALO** "And put a period where?"

**MARNELL** "Put a period following 'the City of Wichita', and strike the remainder."

**KNEBEL** "I am wanting to get a clarification. You want to strike Item F entirely?"

**MARNELL** "Yes."

**OSBORNE-HOWES** "I am just looking at the presentation that he made today. Is that not what you are looking at?"

**MARNELL** "No. I am talking about the staff report."

**KROUT** "So this would give no ability for the Airport Authority Director to question an FAA ruling?"

**MARNELL** "Yes, it would. The Airport Director is free to contact the FAA at any time and point anything out to them under the FAA's Rule for Navigation. So that would be perfectly acceptable. So if he thinks there is an error in it, he can contact them."

**CARRAHER** "Further questions and commentary?"

**HENTZEN** "Let me ask Mr. Marnell that if put on Item H, put a period behind 'the City of Wichita' and then add the wording on this separate sheet that reads 'that concurrence of the Director of Airports shall be within 5 days'. In other words, that whole sentence. Is that what you intend?"

**MARNELL** "NO. I just intend for it to be a period after 'the City of Wichita'. The FAA is the expert agency."

**HENTZEN** "Well, I am going to vote for it either way. I was just concerned about if the airport manager would take 30 or 60 days, I was thinking that this addition of this language would prevent that."

**MARNELL** "No. The way it would be stated if it ended after the City of Wichita would mean that the applicant is required to furnish the Director of Airports a copy of the FAA approval."

**HENTZEN** "I can live with that."

**CARRAHER** "Are there further questions or commentary?"

**OSBORNE-HOWES** "I guess my only concern is that the applicant is willing to add this statement. I think we should go, in this case, according to what the applicant has requested. So I won't be voting for the motion."

**MCKAY** "Well, amend it."

**OSBORNE-HOWES** "How is that done?"

**CARRAHER** "Ms. Osborne-Howes, are you wanting to make a friendly amendment to Mr. Marnell's motion?"

**OSBORNE-HOWES** "Is that what it is called? Sure."

**CARRAHER** "Well, you are asking him to change it and if he is willing to accept it."

**OSBORNE-HOWES** "And he has said no, right?"

**MARNELL** "No, I won't accept it. People accept stuff because they feel bullied into it by staff at times. This is one of these things that is just superfluous. The FAA is the expert agency, there is nobody in this town that is a better expert in that area and they will either approve it or not. If they don't approve it, they can't build the tower. It is as simple as that. And to provide a copy to the Airport Authority is perfectly acceptable, but they are not the controlling authority."

**SUBSTITUTE MOTION:** That the sentence 'concurrence to the Director of Airports shall be granted within 5 business days of receipt of the FAA approval, and shall not arbitrarily denied' be added into the conditions.

**OSBORNE-HOWES** moved, but the motion died for lack of a second.

**CARRAHER** "We are back to the original motion. Are there any further questions of commentary regarding the original motion on the floor? Seeing none, we will move into a voice vote."

**VOTE ON THE ORIGINAL MOTION:** The motion carried with 11 votes in favor (Warren, Johnson, Michaelis, Warner, McKay, Platt, Carraher, Garofalo, Barfield, Marnell, Hentzen and Lopez). Osborne-Howes voted in opposition. Platt abstained. Anderson was not present.

**KROUT** "For the benefit of the applicant and the people in the audience, this is the final action on the Conditional Use unless there is an appeal from a property owner within 1,000 feet, and I don't expect that there will be. Or, if the applicant appeals the condition, which I don't think he will, or the Director appeals this case, which I don't expect to, or if the County Commission decides that they want to reconsider the action of the Planning Commission."

-----  
**CARRAHER** "We decided to hold off on No. 8, is that correct?"

**KROUT** "Yes. We won't take any action."

**CARRAHER** "Are there any other matters that need to come before the Commission at this time? Seeing none, I would entertain a motion for adjournment."

**MOTION:** That the Metropolitan Area Planning Commission adjourn."

**LOPEZ** moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously.

-----  
The meeting was formally adjourned at 3:50 p.m.

State of Kansas     )  
Sedgwick County    ) <sup>ss</sup>

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2001.



---

Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)